

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

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NOTICE OF PUBLIC HEARING

PETITION OF EXTENSION OF TIME

PERMIT NO. 5882 (APPLICATION 10216)

OF THE CITY OF SAN LUIS OBISPO AND

THE UNITED STATES ARMY CORPS OF ENGINEERS

SALINAS RIVER IN SAN LUIS OBISPO COUNTY

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PAUL R. BONDERSON BUILDING

FIRST FLOOR HEARING ROOM

SACRAMENTO, CALIFORNIA

WEDNESDAY, OCTOBER 13, 1999

9:00 A.M.

REPORTED BY: TERI L. VERES, CSR NO. 7522

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SACRAMENTO, CALIFORNIA
WEDNESDAY, OCTOBER 13, 1999

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HEARING OFFICER BROWN: Good morning, Ladies and Gentlemen. Bring the hearing to order. We ended up last night with Ms. Scarpace doing cross.

Panel, Ms. Scarpace, are you ready to proceed?

MS. SCARPACE: Yes.

H.O. BROWN: Do you need a reminder what your last question is or was?

MS. SCARPACE: Yes.

H.O. BROWN: Erin, would you read it, please.

MS. MAHANEY: According to the court reporter from yesterday, Esther, the last question is: "I want to know if you did any analysis of the effects of the reduced spills on that water quality?"

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CONTINUED CROSS-EXAMINATION OF SAN LUIS OBISPO
BY CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
BY MS. SCARPACE

MS. SCARPACE: On water quality in the Paso Robles Water Basin?

MR. HUTCHINSON: The question had to do with a passage in the report that discussed the potential for degraded water quality under an overdraft condition, as

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1 wells would have to be sunk deeper and deeper into core
2 quality production zones.

3 In terms of the analysis that we did which looked
4 primarily at the recharge or the reduction in flow at
5 Paso Robles, which then would translate to some level of
6 reduced recharge in Paso Robles, it would be an
7 insignificant change in the amount of recharge that would
8 infiltrate from the Salinas River into the Paso Robles
9 groundwater basin.

10 Couple that with the fact that the pumping
11 depressions in the Paso Robles Basin are largely on the
12 east side of the basin and the Salinas River is on the
13 west side of the basin, there would be no impact at all
14 even though the recharge reduction would be very minor,
15 on the order of three hundred acre-feet per year in a
16 basin that holds something like twenty-five million
17 acre-feet; and with a total average recharge of about
18 47,000 acre-feet we'd see about a three hundred acre-foot
19 reduction in recharge.

20 And most of the poor quality of water that is
21 really being discussed in that report is largely as a
22 result of deeper drilling on the east side of the basin
23 where the Salinas River recharge doesn't even reach based
24 on the contour maps of the groundwater basin.

25 MS. SCARPACE: Did you take into consideration the

1 proposal of developing the Santa Margarita Ranch, which
2 borders Trout Creek and, I believe, Yuba Buena Creek,
3 which are tributaries to the Salinas River, in making
4 your calculations on the impact of reduced flows?

5 H.O. BROWN: Can you hear in the back of the room?

6 MR. HUTCHINSON: I think that's more of a question
7 for Bobby in the terms of the scope of the analysis in
8 terms of other projects.

9 MR. RAY: The EIR considers other projects for
10 which permits had been identified and submitted where
11 there was a basis -- a project description basis upon
12 which to do a cumulative impact analysis at the time that
13 the EIR was -- the revised draft was issued and then any
14 comments that were received on the revised draft are
15 addressed in the final.

16 There is an analysis based on available data
17 regarding the Santa Margarita Ranch development as it was
18 envisioned at that point in time. I don't believe that
19 there is a specific analysis in terms of combined project
20 impacts on downstream flows. I don't believe that there
21 was any information at that point in time that was
22 available regarding the proposed withdrawals of
23 groundwater or any surface water diversions at the time
24 that the EIR was prepared.

25 MS. SCARPACE: Would you consider it significant

1 new information to know that Santa Margarita Ranch
2 intends to plant 3,000 -- over 3,000 acres in vineyards
3 which pumps on the average of about an acre-foot per acre
4 per year and, in addition, will have a housing project of
5 over a hundred and fifty homes as well as a golf course
6 and equestrian center and -- which total estimated annual
7 pumping will be about 5,000 acre-feet a year?

8 MR. RAY: I can answer that -- obviously that that
9 project is totally unrelated to this project. To the
10 extent that they plan to go forward with that project,
11 they're going to have to completely comply with CEQA,
12 water rights, et cetera, specific to that project.

13 It is their responsibility in their environmental
14 documentation to assess the cumulative impacts of that
15 project with this project since we came first in time and
16 we did not have available to us the details of that
17 project.

18 Obviously, as time goes on there may be more and
19 more projects proposed in the downstream area that have
20 the potential to affect water resources. As those
21 projects come along, they will need to comply with the
22 California Environmental Quality Act and address the
23 cumulative impacts of their projects with our project and
24 any other projects that happened to be proposed at that
25 point in time.

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1 MS. SCARPACE: Wouldn't it be fair to say that
2 pumping about 5,000 acre-feet per year from these
3 tributaries to the Salinas River, Trout Creek and Yuba
4 Buena Creek would require the City of San Luis Obispo to
5 increase the live stream releases?

6 MR. HUTCHINSON: In general, groundwater pumping in
7 the Atascadero area, from the shallow wells especially,
8 causes the river to quote unquote "dry up" sooner than
9 had no pumping occurred or had -- you know, with limited
10 pumping. So, clearly, the live stream releases are
11 directly tied to other activities on the river.

12 With specific respect to the project you're talking
13 about, I'm not exactly sure where it is or how the
14 pumping of the water would actually influence the river
15 itself; but, in general, any pumping along the mainstem
16 that causes the river to dry up will cause an increase in
17 the live stream release.

18 MS. SCARPACE: Okay. Let's see, I'd like you to
19 refer to the EIR. This would be Appendix K -- K and L
20 and it's the yearly spill data. Let's see what the page
21 is. Do you see a page number?

22 MR. BAIOCCHI: I don't see a page number on there.

23 MR. RAY: What is the figure number?

24 MS. SCARPACE: Oh, the figure number. Let's see --
25 let me show it to you and then maybe you can --

1 MR. HUTCHINSON: Yeah, that's it.

2 MS. SCARPACE: Okay. I'd like you to -- first of
3 all, to look at -- well, explain what this figure shows.

4 MR. HUTCHINSON: What this figure shows -- it's a
5 summary -- it's a graphical summary of the data that
6 appears in other tables in the EIR and in this appendix.

7 It shows the years 1945 to 1995, and it shows the
8 simulated spill based on the model runs of the existing
9 dam and the condition under the raised dam.

10 So in each one of these plots there is a spill
11 calculated by the model under the existing dam scenario
12 and under the raised dam scenario. So what it shows is
13 in some years -- in years that are spills, as a result of
14 raising the reservoir there is a reduction in the spill
15 and in some years it's substantial. In some years --
16 like in '69 there was a huge spill under the existing dam
17 or the raised dam. There would still be a lot of water
18 supply.

19 MS. SCARPACE: Okay. Why don't we go through these
20 years individually, the spill years, since there aren't
21 too many of them, from 1942, I guess, is about --

22 MR. HUTCHINSON: It's 1945.

23 MS. SCARPACE: '45, okay, and comparing the
24 percentages of the difference between what the spill
25 would be before with the existing dam as compared to the

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1 expanded dam.

2 Wouldn't you say that in '45 the existing dam would
3 produce about a fifty percent less spill than -- with the
4 raised -- I mean, that the raised dam would result in a
5 fifty percent less spill than the existing dam?

6 MR. HUTCHINSON: I can't tell that from the figure.
7 All I -- this is not data in such a way that you can
8 estimate a percentage in that way. All I can say looking
9 at 1945 is that under the existing dam and the raised dam
10 scenarios, in each case there would have been a
11 relatively small spill.

12 MS. SCARPACE: Okay. Now let's look at the next
13 spill year, which is approximately 1952, and what would
14 you say the difference in those two figures would be?

15 I mean, it looks to me like perhaps there would be
16 an eighty percent -- at least eighty to ninety percent
17 reduction caused by the raised dam in the spill level.

18 MR. HUTCHINSON: What I can see is the model
19 estimated that there was slightly over 20,000 acre-foot
20 of water spilled under the existing dam scenario and
21 substantially less, something on the order of -- you'd
22 have to look at the actual numbers, but I'd say it looks
23 like on the order of 2,000 acre-foot -- acre-feet spilled
24 under the raised dam scenario.

25 MS. SCARPACE: Okay. And then the next large spill

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1 year is around 1958; is that correct?

2 MR. HUTCHINSON: 1958 looks like the next one.

3 MS. SCARPACE: And the reduction in the spill
4 caused by the existing dam would be approximately what,
5 what percentage?

6 MR. HUTCHINSON: I can't tell percentages using
7 the -- this information alone.

8 MS. SCARPACE: Well, then, what about eight
9 acre-feet per year?

10 MR. HUTCHINSON: Well, from the looks of it the
11 existing dam scenario showed about a 30,000 acre-foot
12 spill and the raised dam looked like about a 25,000
13 acre-feet. So there was still a large spill that year,
14 just not as much as there would have been under the
15 existing dam scenario.

16 DR. GRAY: Bill, I want to bring to your attention.
17 You're interested in the specific numbers that were
18 generated by this model.

19 MS. SCARPACE: Right.

20 DR. GRAY: Those numbers are presented in Appendix
21 L in Table 1 for each of the spill years. The quantity
22 of the spill under the existing dam and under the raised
23 dam is presented in that table along with the percentage
24 reduction, as well as additional data. So if you wanted
25 to look at each individual year, I just direct your

1 attention to Table 1 in Appendix L.

2 MR. HUTCHINSON: Thank you. His is Appendix L. I
3 did Appendix K. Thanks.

4 MS. SCARPACE: Well, then, between 1945,
5 summarizing those years, and 1958 wouldn't it be fair to
6 say that there was only one significant spill year and
7 that was in 1952? That's quite a long dry period. And
8 if we had the expanded dam, there would be an enormous
9 decrease in the amount of spill that would occur between
10 1945 and 1957.

11 MR. HUTCHINSON: I'm not sure I would agree with
12 the characterization in terms of the adjectives that you
13 used. It simply reports what the spills would be under
14 existing dam and under the raised dam scenarios, and I
15 gave nothing in the way of conclusions with regard to
16 enormous reductions or substantial reductions in terms of
17 attaching any significance to those particular
18 reductions. That was more John's area where I provided
19 these pieces of information with respect to biological
20 flows.

21 With respect to how these kind of data work in
22 terms of water resources, in terms of recharge, in terms
23 of the effects of pumping, these reductions are
24 insignificant.

25 MS. SCARPACE: Well, wouldn't you agree that

1 between -- for this twelve-year period between 1945 and
2 1958 there was only one significant spill year and
3 that -- wouldn't you agree to that?

4 MR. HUTCHINSON: Between 1945 and 1958 there were
5 three spill years: 1945, 1952 and 1958.

6 MS. SCARPACE: And what is -- would be the
7 resulting reduction in spill between those years?

8 MR. HUTCHINSON: Based on Table 1 in Appendix L,
9 which are the data --

10 DR. GRAY: Bill, the third column has that
11 information.

12 MR. HUTCHINSON: Right. In those three years the
13 difference in the spill under the existing dam and the
14 increased -- or the raised dam, if you will, the total of
15 those three years was 26,192 acre-feet in those three
16 years.

17 MS. SCARPACE: Okay. Did you account -- or make
18 any analysis of the cumulative impacts of the existing
19 dam and the proposed raised level dam on the stream flows
20 down the Salinas -- cumulative impacts of both projects?

21 MR. HUTCHINSON: I don't understand.

22 MS. SCARPACE: Well, CEQA requires a cumulative
23 impact analysis, and that means existing projects as well
24 as your proposed project.

25 So it would be the effect of the existing dam on

1 the flows that would have occurred in the Salinas River
2 but for the existing dam, in addition to the effect of
3 the raised level dam.

4 MR. HUTCHINSON: I'm going to defer to Bobby on the
5 CEQA stuff.

6 MR. RAY: I can answer that question. The dam was
7 constructed over fifty years ago for the purposes of the
8 EIR analysis -- all the analyses, not just downstream
9 flow effects. The existing dam is considered to be
10 baseline conditions for the purposes of the EIR.

11 So, no, the effects of the existing dam were not
12 considered beyond what the -- because it was felt it
13 would be speculative and -- to try to calculate what the
14 impacts of the dam had been, and due to the amount of
15 time that it's been in place it was considered to be
16 baseline condition and that's very typical for other
17 projects.

18 MS. SCARPACE: Okay. So since you didn't consider
19 that, then your analysis would not be adequate for
20 assessing the -- what a Live Stream Agreement would need
21 to protect the interest of downstream water rights
22 holders; is that correct?

23 MR. HUTCHINSON: Say that again.

24 MS. SCARPACE: Since you didn't look at the effects
25 of the existing dam on downstream flows down the Salinas,

1 you wouldn't be able to assess the adequacy of the
2 present Live Stream Agreement from your analysis; is that
3 correct?

4 MR. SLATER: I'm going to object. Define "adequacy
5 of the Live Stream Agreement."

6 MS. SCARPACE: For meeting -- adequacy to meet the
7 needs of downstream users.

8 MR. SLATER: I'm going to object on the basis that
9 that's speculative and undefined.

10 H.O. BROWN: Ask the question again.

11 MS. SCARPACE: Would your EIR analysis be able to
12 draw any conclusions as to the adequacy of the Live
13 Stream Agreement to meet downstream rights' needs?

14 MR. SLATER: I'm going to object on the basis that
15 "downstream rights" are undefined. Where? How far?

16 H.O. BROWN: Do you understand the question?

17 MR. HUTCHINSON: I can't tell you what the
18 definition of "adequacy" is. All I can tell you is that
19 we used the live stream releases as a given. We used the
20 existing dam as it's currently constructed as a given and
21 simply focused our analysis on the raised dam.

22 So it wasn't a matter of evaluating the live stream
23 releases as adequate or inadequate. They were just there
24 as far as our analysis goes.

25 H.O. BROWN: Okay. You don't know the answer to

1 the question then?

2 MR. HUTCHINSON: In terms of being able -- the
3 answer to the question did we look at the Live Stream
4 Agreement in any way, shape or form other than use it as
5 a given, no.

6 H.O. BROWN: Okay.

7 MS. SCARPACE: Okay, that answers my question.

8 Do you want to ask anything?

9 MR. BAIOCCHI: I'm going to start
10 cross-examination, Mr. Brown. I'm hard of hearing and
11 I'm very loud and I believe everybody in this room can
12 hear me hopefully.

13 H.O. BROWN: Yes, you speak very loud,
14 Mr. Baiocchi. That's great. You're welcome to use the
15 microphone to speak even louder.

16 MR. BAIOCCHI: Thank you. I'm going to direct
17 questions to Dr. Gray. I could spend several hours with
18 some of the statements in his testimony. I'm going to
19 try to keep it reduced, but I still have to go someplace
20 with it so you'll understand where I'm going.

21 H.O. BROWN: All right. Keep in mind we're going
22 to try to finish up today --

23 MR. BAIOCCHI: Yes, sir, I understand that.

24 H.O. BROWN: By addressing your questions and
25 answers as precisely as you can that will be helpful.

1 MR. BAIOCCHI: Okay.

2 H.O. BROWN: If we can't, tentatively the staff up
3 here has set next Monday aside to conclude this. This
4 may cause some consternation with some of you and at the
5 same time encouragement to finish today in case we have
6 to go next Monday. So that date's tentatively set aside,
7 but let's try to do it today.

8 MR. BAIOCCHI: Okay.

9 H.O. BROWN: Please proceed.

10 MR. BAIOCCHI: Thank you very much, Mr. Brown.

11 Dr. Gray, as I recall in your oral testimony, you
12 indicated you spent 450 hours on the project; is that
13 correct?

14 DR. GRAY: That's correct.

15 MR. BAIOCCHI: How many hours in the field have you
16 spent?

17 DR. GRAY: Probably sixty to seventy hours in the
18 field.

19 MR. BAIOCCHI: Seventy hours?

20 DR. GRAY: Uh-huh.

21 MR. BAIOCCHI: And of those seventy hours, did you
22 examine the stream below the dam --

23 DR. GRAY: I did.

24 MR. BAIOCCHI: -- during drought conditions.

25 DR. GRAY: I did not visit it during drought

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1 conditions.

2 MR. BAIOCCHI: Did you examine the stream during
3 low water conditions?

4 DR. GRAY: Define what you mean by "low water."

5 MR. BAIOCCHI: The annual run-off is based on, you
6 know, drought conditions, below normal, normal, above
7 normal, wet.

8 DR. GRAY: If you mean did I visit it at the end of
9 summer, the answer's "yes." I visited there in the
10 winter. I also visited under springtime conditions.

11 MR. BAIOCCHI: But during all types of water years?

12 DR. GRAY: Of course not.

13 MR. BAIOCCHI: Of course not, okay. Did you --
14 were you in the field during the drought of '87 and '91
15 to examine that stream?

16 DR. GRAY: No.

17 MR. BAIOCCHI: Okay, thank you.

18 I'm going to ask you a very, very fundamental
19 question. The question was asked of several biologists
20 at the Santa Ynez hearing.

21 Do fish need water to survive?

22 DR. GRAY: The answer is "yes."

23 MR. BAIOCCHI: Of course, thank you.

24 Does the operation of Salinas Dam and Reservoir
25 provide a continuous daily flow of water at all times

1 from Salinas Dam into the Salinas River below the dam
2 based on daily hydrology records since the dam and
3 reservoir became operational?

4 DR. GRAY: I cannot answer that question.

5 MR. BAIOCCHI: Okay. Could you please go to --
6 forget it.

7 Let's go a bit further with that. You have not
8 examined hydrology records at all?

9 DR. GRAY: I have examined some hydrology records
10 but not sufficient to answer that question.

11 MR. BAIOCCHI: Are you aware that there's zero
12 flows from the dam?

13 DR. GRAY: I'm afraid you're going to have to ask
14 that question again. I don't understand it.

15 MR. BAIOCCHI: Okay. Based on the operations of
16 the dam, are you aware that there's no water being
17 released from the dam?

18 DR. GRAY: Under certain conditions there's no
19 water released. Under other conditions water is
20 released.

21 MR. BAIOCCHI: But there are times when no -- it's
22 true that there are times when there are zero flows? In
23 other words, I call it zero flows.

24 DR. GRAY: I actually cannot affirm that because
25 sometimes at dams there are releases made from valves

1 just due to leakage or to pressure problems. It's not --
2 even though there's no intention to release water, there
3 may be water being released. So I can't affirm that.

4 MR. BAIOCCHI: Okay. I refer you to CSPA
5 Exhibit K, please. If you could review it.

6 DR. GRAY: Okay.

7 MR. BAIOCCHI: Exhibit K provides some information,
8 not total information, based on water year types but
9 there are certain water years in there. It's daily
10 flows. Just by going through that data on the daily
11 flows, do you see zero releases from the dam? There's a
12 column.

13 DR. GRAY: Okay, it's going to take me a while to
14 read this table. I'm looking for the date that's on the
15 first column; is that correct?

16 MR. BAIOCCHI: Well, if you go to -- let me take
17 this thing apart, I'm sorry.

18 All right. Based on the first page, which shows,
19 if I read this correctly, 1993 or '93, the sixth day --
20 sixth month and the first day?

21 DR. GRAY: That's correct.

22 MR. BAIOCCHI: If you go through that column there,
23 that's the first page, you'll find that the lowest flow
24 provided was 0.21 acre-feet.

25 DR. GRAY: I don't know the origin of this table.

1 I've never seen it before so I can't attest that that
2 column represents a discharge -- a release from the dam,
3 a purposeful release, but it does say a downstream
4 release of .21 acre-feet on that day.

5 MR. BAIOCCHI: Mr. Brown, Lorraine has indicated
6 that she got these records from the County, but it's the
7 City that provides the data.

8 MS. SCARPACE: No, the County provides the data.

9 MR. BAIOCCHI: Okay, County provides the data --
10 it's the daily flow from the dam.

11 MS. SCARPACE: The County provides the data.

12 H.O. BROWN: Well, is there someone here that can
13 attest to this data?

14 DR. GRAY: I think Mr. Hutchinson can respond to
15 that question.

16 MR. HUTCHINSON: Yes.

17 H.O. BROWN: Okay.

18 MR. HUTCHINSON: The County operates the reservoir.
19 The County maintains the data. The County provided these
20 data. These are the kinds of data that we used in
21 developing the analysis. So in terms of the downstream
22 release of .21 acre-feet, that is the downstream release.

23 MR. BAIOCCHI: Thank you. Now, go to the second
24 page. On the top it's '93, fifth month, first day --

25 H.O. BROWN: While you're on that first page, how

1 do you read the month?

2 MR. BAIOCCHI: Well, the way I read it, it could be
3 incorrect, '93 would be the year, 06 would be the month
4 and 01 would be the first day of the month.

5 H.O. BROWN: All right.

6 MR. HUTCHINSON: (Nodding of the head.)

7 MR. BAIOCCHI: Can we go to the second page?

8 DR. GRAY: I'm going to ask Mr. Hutchinson to
9 respond to your questions to the extent that it's
10 hydrology information and he's more familiar with it.

11 MR. BAIOCCHI: Okay. Can we go to page two? Do
12 you have page two?

13 MR. HUTCHINSON: May of '93?

14 MR. BAIOCCHI: Yes, and it shows for downstream
15 releases 0.00 on the 1st, 2nd, 3rd and 4th.

16 MR. HUTCHINSON: It says zero for downstream
17 release, but spillway discharge has non-zero numbers. So
18 that was when the dam was actually spilling.

19 MR. BAIOCCHI: Okay, let's go to the third page.

20 MR. HUTCHINSON: The way these data were explained
21 to me when I got them, this column that's labeled
22 "Downstream Release" is out of the valves down at the
23 bottom of the dam. The spillway discharge is obviously
24 over the spillway. There's two mechanisms for water to
25 leave the dam aside from just leakage and that sort of

1 thing, two purposeful -- they're basically purposeful
2 releases.

3 One is a spill and one is opening the valve
4 discharge, and that's where these two columns come into
5 play, and that's how you interpret the data and how we
6 split out what we call releases versus spills in a
7 historic data record.

8 MR. BAIOCCHI: Can we go to '92, the year '92 on
9 the eighth month, first day, please.

10 MR. HUTCHINSON: Okay, August 1992.

11 MR. BAIOCCHI: Spillway releases are zero, right?

12 MR. HUTCHINSON: That's correct.

13 MR. BAIOCCHI: Throughout the entire month and
14 releases from the dam were as low as 2.4 in '92, the
15 eighth month, 27th day, correct?

16 MR. HUTCHINSON: That appears to be the lowest
17 daily downstream release.

18 MR. BAIOCCHI: We go to '92 --

19 MR. HUTCHINSON: But I'd like to point out the way
20 it was explained to me the way they operate the dam, this
21 live stream release is done as more of an accounting
22 method on a monthly basis where they try and catch up
23 because they don't always -- they can't obviously respond
24 when the river goes dry. It takes some time to make
25 whatever adjustments and do the estimates of what the

1 inflow is.

2 So, for example, the August of 1992, there is a
3 downstream release. The lowest one is 2.40. The total
4 monthly release that month was 356.69 acre-feet and the
5 last column, the furthest on the right-hand side, is the
6 quote unquote inflow -- "Estimated Inflow" column and
7 that total is 310.09.

8 So in this particular instance in this particular
9 month there was a downstream release of 356.69 acre-feet
10 versus an inflow of 310.09 acre-feet. So here's an
11 example of no spill, but there was actually a release
12 over and above, by a slight amount, the total inflow.

13 MR. BAIOCCHI: To simplify it, has there ever been
14 no releases from the spillway and zero releases from the
15 valve?

16 MR. HUTCHINSON: I didn't look at the records in
17 that level of detail; but if you found one, tell me which
18 one it is.

19 MR. BAIOCCHI: Okay, I'll do that. Okay, let's
20 move on.

21 Dr. Gray, did you and your associates, on behalf of
22 the City of San Luis Obispo and/or the Army Corps of
23 Engineers, do any instream flow fishery studies based on
24 acceptable instream methodologies which determine the
25 daily amounts of water needed to sustain all live stages

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1 of fish species below Salinas Dam to keep the fish in
2 good condition?

3 DR. GRAY: Are you referring to the IFIM
4 methodology?

5 MR. BAIOCCHI: I'm referring to any methodology.

6 DR. GRAY: Well, that's a bit vague. We used
7 aquatic survey methodologies both for fish and aquatic
8 organisms, and these were agency-approved methodologies
9 that we had Fish and Game and had Fish and Wildlife
10 approve before we conducted the studies.

11 MR. BAIOCCHI: So you have conducted instream
12 fishery flow studies?

13 DR. GRAY: Well, you said any methodology and my
14 answer is "yes."

15 MR. BAIOCCHI: Okay. What methodology was used?

16 DR. GRAY: Well, we used the Rossgen method to
17 characterize stream morphology, gradient, substrate. In
18 terms of aquatic fish resources, we used electrofishing
19 and dip net fishing and seine fishing to capture fish.

20 We set up sampling stations upstream of the
21 reservoir and made repetitive samples of the fish. We
22 did dip net sampling for invertebrates, counted and
23 evaluated their diversity in relative abundance.

24 MR. BAIOCCHI: Based on the methodology that was
25 utilized, what is your flow recommendation from the dam

1 to sustain fish species, aquatic species,
2 macroinvertebrates, the whole thing? What are your flow
3 recommendations -- daily flow recommendations?

4 DR. GRAY: Developing flow recommendations was not
5 part of the CEQA Environmental Impact Analysis.

6 MR. BAIOCCHI: So what you did -- you used a
7 methodology to determine flows and habitat requirements
8 for fish?

9 DR. GRAY: No, we did not.

10 MR. BAIOCCHI: Oh, you didn't. Okay, that's what I
11 was going at.

12 DR. GRAY: You asked me if I used any methodology
13 to assess fish, and my answer was "yes."

14 MR. BAIOCCHI: Yeah, but have you done studies
15 purposely to determine how much water should be released
16 from the dams to sustain those species?

17 DR. GRAY: No, we did not.

18 MR. BAIOCCHI: Okay. That's where I'm getting at,
19 thank you.

20 Okay. You claimed in your testimony that spawning
21 and rearing habitat is poor in the Salinas River below
22 Salinas Dam for threatened steelhead, Southern steelhead
23 trout species; isn't that true?

24 DR. GRAY: We described in Appendix L of the Final
25 EIR the habitat characteristics three miles below the

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1 dam, and we came to the conclusion that tha was poor for
2 spawning and rearing for Southern steelheads.

3 MR. BAIOCCHI: I'm referring to your testimony.

4 DR. GRAY: And it's reflected in my testimony.
5 Beyond that three point into the canyon, there are
6 reaches of the river that do have suitable habitat, and
7 that's also reflected in my testimony and in the Final
8 EIR.

9 MR. BAIOCCHI: Thank you. Did you and your
10 associates, on behalf of the City and the Corp of
11 Engineers, conduct any study to determine the effects to
12 spawning habitat, to threatened steelhead species and
13 other fish species below the dam resulting from the lack
14 of downstream recruitment of spawning gravels resulting
15 from the construction of Salinas Dam?

16 DR. GRAY: I need to correct you. We did not work
17 under the direction of the Corps of Engineers. Our work
18 was for the City of San Luis Obispo for an environmental
19 impact report.

20 MR. BAIOCCHI: Did you evaluate the effects from
21 the dam to spawning gravels that would have normally gone
22 downstream if the dam wasn't there? Did you do any kind
23 of an analysis study?

24 DR. GRAY: That was not part of our environmental
25 impact review for the proposed project.

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1 MR. BAIOCCHI: So, in other words, you didn't study
2 that, the effects to habitat as a result of downstream
3 recruitment of gravels? You didn't do that?

4 DR. GRAY: I believe you're talking to the effect
5 of the existing dam on gravels downstream of the dam; is
6 that correct?

7 MR. BAIOCCHI: I'm talking about gravels that would
8 move from the upper reaches above the reservoir into the
9 stream reach below the dam.

10 DR. GRAY: No, we did not address that specifically
11 in the EIR.

12 MR. BAIOCCHI: Thank you very much.

13 Did you and your associates, on behalf of the City,
14 okay, and we'll leave out the Corps, all right, conduct
15 any water quality studies to determine the effects to
16 cold water fish and aquatic species and their habitat
17 resulting from elevated water temperatures detrimental to
18 cold water species resulting from releases of water from
19 Salinas Dam and Reservoir to meet the Live Stream
20 Agreement, which is also called the Live Stream
21 Conditions, including when there are -- when there is no
22 water being released from the dam?

23 DR. GRAY: We did not address the impacts of the
24 Live Stream Agreement, including the effects of
25 temperature.

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1 MR. BAIOCCHI: So there was no water quality
2 studies conducted at all?

3 DR. GRAY: Relative to the Live Stream Agreement,
4 that's correct.

5 MR. BAIOCCHI: Okay. Well, the next question's a
6 legal question and I'll stay away from it.

7 Did you and your associates, on behalf of the City
8 of San Luis Obispo, conduct any water -- a cold water
9 study to determine the capacity of how much cold water is
10 available in Santa Margarita Reservoir aka Salinas
11 Reservoir during all water year types and also during
12 various reservoir levels?

13 DR. GRAY: No.

14 MR. BAIOCCHI: Now, we have Southern steelhead in
15 the river; isn't that correct?

16 DR. GRAY: The steelhead occurs in the Salinas
17 River Watershed.

18 MR. BAIOCCHI: And there's a tributary that flows
19 below -- the first tributary that flows below the dam is
20 where? Where's it located?

21 DR. GRAY: Well, there's a number of tributaries.
22 I think if you define the size of tributary, that might
23 help me decide which one to identify.

24 MR. BAIOCCHI: It's my understanding that there's a
25 tributary two miles below the dam.

1 DR. GRAY: The largest tributary below the dam is
2 located three miles below the dam. That's Pilitas Creek.

3 MR. BAIOCCHI: Okay. Three miles, thank you, three
4 miles. So consequently would it be reasonable -- well,
5 let me get away from that.

6 If in the event that water released from the
7 reservoir is not compatible for cold water species, what
8 would be the effects to the cold water species? You're a
9 biologist.

10 DR. GRAY: I'd like you to ask that question again.
11 I'm not sure I'm going to have the information I need to
12 answer it; but if you'd ask it one more time, I'd
13 consider it.

14 MR. BAIOCCHI: Let me rephrase it. Do cold water
15 species, such as Southern steelhead, need cold water to
16 survive?

17 DR. GRAY: Yes.

18 MR. BAIOCCHI: Do you know -- and there's been no
19 studies conducted on water quality?

20 DR. GRAY: Relative to the Live Stream Agreement
21 that's a correct statement.

22 MR. BAIOCCHI: Okay. So we don't know what effects
23 to water quality or water temperatures -- we don't know
24 the effects based on your studies or lack of studies on
25 cold water species below the dam?

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1 DR. GRAY: Are you referring to the Live Stream
2 Agreement or the project of raising the reservoir?

3 MR. BAIOCCHI: I'm talking about the existing
4 project.

5 DR. GRAY: We did not study that in the
6 Environmental Impact Report. That was not part of the
7 CEQA review.

8 MR. BAIOCCHI: Okay. So you don't have any
9 information on the capacity of cold water in the existing
10 reservoir, right?

11 DR. GRAY: Are you asking about the volume of cold
12 water?

13 MR. BAIOCCHI: Volume.

14 DR. GRAY: No, I do not have that information.

15 MR. BAIOCCHI: Do you have any information on the
16 volume of cold water in the proposed enlargement of the
17 dam? Have you done those studies?

18 DR. GRAY: No, I'm not aware of that information.

19 MR. BAIOCCHI: Okay, thank you.

20 Is the outlet valves -- I think -- I believe they
21 have two -- or are the outlet valves if it's two, is the
22 outlet valve if there's one, single or plural attempts,
23 anyway, at Salinas Dam screened to prevent fish species
24 from being entrained in the outlet valve and released
25 into the river below the dam?

1 DR. GRAY: I do not have knowledge of that. I
2 can't answer that question.

3 MR. BAIOCCHI: Is there anyone that can answer that
4 if it's screened? It should be common, common knowledge.

5 MR. SLATER: Apparently not.

6 UNIDENTIFIED SPEAKER: No, it isn't.

7 H.O. BROWN: Okay, direct your questions to the
8 witnesses.

9 MR. BAIOCCHI: Okay. So --

10 DR. GRAY: I have no knowledge of it, and nobody
11 else on this panel has knowledge of it.

12 MR. HUTCHINSON: I have no knowledge of it one way
13 or the other.

14 MR. BAIOCCHI: Okay. Then I'll have to phrase --
15 Mr. Brown, I'll have to phrase a question a certain way
16 in order to get some information out.

17 In the event it's not screened, the outlet valve or
18 valves are not screened and cold water species from the
19 reservoir, such as trout, are diverted out through the
20 valve, okay, into the live stream, okay, if there's a
21 live stream there and the water quality's not sufficient,
22 what would be the effects of those fish?

23 DR. GRAY: That's a speculative situation. I'd
24 have to have a lot more information to give you an
25 opinion on that.

1 MR. BAIOCCHI: Okay. In order for you to make an
2 opinion you'd need to have studies, right? You'd have to
3 have studies conducted so you know what you're talking
4 about, right?

5 DR. GRAY: Well, I'd have to have information. I'd
6 have to know what the flows are, the temperature, what
7 type of fish you're talking about, what time of year.
8 It's a hypothetical situation.

9 MR. BAIOCCHI: Well, I'm talking about cold water
10 species, if they're diverted through the valve.

11 MR. RAY: Could I point out that the proposed
12 project does not intend to have any changes to the Live
13 Stream Agreement. So to the extent that you're talking
14 about releases consistent with the live stream, the
15 proposed project will not influence those releases. So I
16 don't know why we would have studied it as part of our
17 CEQA analysis.

18 MR. BAIOCCHI: Isn't it true -- you're a fishery
19 biologist -- that whether it's the Fish and Wildlife
20 Service or it's NMFS or it's the Department of Fish and
21 Game, they do require the screening of devices, don't
22 they? From time to time and most of the time they
23 require fish screens to prevent the entrainment of fish,
24 for example, in a diversion; isn't that true?

25 DR. GRAY: I can't speak to the specific

1 regulations. There are policies encouraging the
2 screening of diversions -- policies by the Department of
3 Fish and Game. To the extent that it applies to this
4 project, I cannot answer it.

5 H.O. BROWN: Mr. Baiocchi --

6 MR. BAIOCCHI: Okay, I'll get away from it.

7 H.O. BROWN: -- for the sake of this hearing, I'm
8 going to re-read the notice that we presented at the
9 beginning of the hearing. It merits noting that the City
10 of San Luis Obispo has not filed a changed petition
11 seeking authorization to modify the existing live stream
12 condition of Permit 5882.

13 Accordingly, this hearing is limited to
14 consideration of the time extension petition filed by the
15 City, including consideration of any bypass flow
16 conditions a party contends are necessary to avoid or
17 mitigate any adverse impacts resulting from changes that
18 would result with approval of the time conditions.

19 Try to --

20 MR. BAIOCCHI: So, Mr. Brown, what you're telling
21 me is that the State Board is going to stay away from
22 requiring enforcement of state law? I'm not an attorney,
23 but I work with attorneys every day. You're going to
24 stay away from enforcing state law? It's not an issue
25 here of fish flows? Is that what I'm hearing? That we

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1 cannot -- we cannot through direct testimony or
2 cross-examination raise questions about the flows and the
3 environmental conditions at the existing project and
4 proposed project? I have a problem with that.

5 I go to 782 of the California Code of Regulations,
6 Title 23.

7 H.O. BROWN: Well, this hearing is limited in
8 scope, Mr. Baiocchi, and we have to draw some strings
9 around -- to the testimony that we've asked for and the
10 information that we've requested.

11 MR. SLATER: Mr. Brown, I might also add, if Cal
12 SPA wants to file a public trust complaint and we can
13 adjudicate the entire Salinas River from Salinas to the
14 Pacific Ocean, I mean, that's a possibility.

15 There's one project here, and the scope of this
16 here has been limited to that project.

17 H.O. BROWN: There are other forums for those
18 considerations, Mr. Baiocchi.

19 MS. SCARPACE: Mr. Brown, CSPA would like to -- we
20 have an objection to the scope of the hearing being
21 limited to exclude the adequacy -- consideration of the
22 adequacy of the Live Stream Agreement.

23 For one thing, that was raised as a specific issue
24 in the protest, and we believe that it should be within
25 the scope of this hearing.

1 And, secondly, the California Constitution, Article
2 10, Section 2 requires the Board in every decision that
3 it makes to prevent the unreasonable use of water and to
4 look at any prior permits with that in consideration,
5 with the unreasonable use of water, or the violation of
6 public trust resources, which includes protecting fish
7 and wildlife.

8 So we believe that the adequacy of the Live Stream
9 Agreement to protect fish must be considered at this
10 hearing and according to the Constitution cannot be
11 excluded. And I've made that point in the opening
12 statement -- the written opening statement that I'm going
13 to submit to the Board. So I'd like to reserve that
14 objection.

15 H.O. BROWN: It's so noted, Ms. Scarpace.

16 MR. BAIOCCHI: So as far as my cross-examination,
17 you're going to limit my cross-examination when I talk
18 about flows and water and all that there with the witness
19 here?

20 H.O. BROWN: If you can tie it in to the scope that
21 was noticed in this hearing, I'll allow it. And I've
22 been very lenient to that extent so far, but I'm going to
23 ask for some consideration on your part, too, Mr.
24 Baiocchi.

25 MR. BAIOCCHI: It makes it very, very difficult,

1 Mr. Brown. You have been reasonable, yes, sir, you have.
2 Yesterday you gave the others -- particularly the other
3 side a lot of time and today's our day in part, but it's
4 going to really restrict due process.

5 H.O. BROWN: You proceed and let's see where we go.

6 MR. BAIOCCHI: Okay. Yes, sir. Can I move ahead
7 to talk about unscreened diversion? Can I go to that to
8 find out if it's screened? Is that fair?

9 H.O. BROWN: Okay.

10 MR. BAIOCCHI: Is the diversion works that is used
11 to divert water to the City of San Luis Obispo from Santa
12 Margarita Reservoir screened to prevent fish species from
13 being entrained and harmed?

14 DR. GRAY: I have no knowledge of that.

15 MR. BAIOCCHI: Do you have knowledge if it's
16 screened?

17 MR. HUTCHINSON: I have no knowledge one way or the
18 other.

19 MR. BAIOCCHI: Will the enlarged dam have a fish
20 screen on that diversion works?

21 MR. RAY: As the project is currently envisioned,
22 there are no proposals to change the diversion structure.
23 It would make common sense that there would be some type
24 of screen to keep organisms from getting into the pumping
25 works. That's obviously not going to extend pump life.

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1 MR. BAIOCCHI: Thank you.

2 Dr. Gray, in your written testimony you claim that
3 quote (reading): Since at least the 1960's the
4 California Department of Fish and Game has not allocated
5 funds to enhance the steelhead fisheries on the
6 watershed, Salinas River, due to its poor conditions.

7 That's quoted.

8 DR. GRAY: That's correct.

9 MR. BAIOCCHI: Okay. Have you read this?

10 DR. GRAY: Have I read that?

11 MR. BAIOCCHI: This, incidentally, is the Steelhead
12 Restoration and Management Plan for California and we
13 have a biologist from the Department of Fish and Game who
14 is subpoenaed that's going to talk about this here. This
15 is my Bible. That's the only copy I got and I'm not
16 giving this up, February of 1996, but -- didn't this cost
17 money?

18 DR. GRAY: Yes.

19 MR. BAIOCCHI: So since 1960, and this is dated
20 February 1996, they have spent money?

21 DR. GRAY: Well, my comment -- or statement was
22 relative to the Salinas River Watershed. When we were
23 investigating the steelhead fisheries in the watershed, I
24 called Dennis McEwan, the author of that study, and asked
25 him why wasn't the Salinas River Watershed included in

1 the Steelhead Management Plan for the State.

2 He indicated that it was not high enough priority
3 to have specific management goals or objectives for that
4 watershed and as far as the Department was concerned
5 there were higher, more important priorities in other
6 watersheds.

7 MR. BAIOCCHI: So what you're saying is that the
8 Salinas River was -- is excluded from the Management
9 Plan?

10 DR. GRAY: It is not specifically included in
11 there. There are no specific watershed goals or
12 objectives for that watershed.

13 MR. BAIOCCHI: Yeah, that is understandable. Okay,
14 that's true. But the question is: Is the Salinas River
15 excluded from the State of California Steelhead
16 Restoration and Management Plan?

17 DR. GRAY: No, of course not. That's an overriding
18 general policy report.

19 MR. BAIOCCHI: Thank you. Are you familiar with
20 the Salmon, Steelhead and Anadromous Fishery Program Act
21 of 1988?

22 DR. GRAY: In general.

23 MR. BAIOCCHI: And that Act -- I don't want to be
24 testifying because I'm cross-examining, but what did that
25 Act do?

1 DR. GRAY: Well, it established policies to restore
2 steelhead fisheries in the State.

3 MR. BAIOCCHI: Okay. Did that Act require that
4 they double the populations?

5 DR. GRAY: That was a goal that was included in the
6 Act.

7 MR. BAIOCCHI: Thank you. Now, based on your
8 information and reviewing a lot of data, what is the
9 population level of Southern steelhead in the Salinas
10 River?

11 DR. GRAY: There's no estimates of the population
12 in the watershed, to my knowledge. The only information
13 I have is for the South Central Evolutionary Significant
14 Unit, which includes the Salinas River, the Carmel, Big
15 Sur, five watersheds, National Marine Fisheries estimated
16 between those five watersheds there's probably fewer than
17 five hundred fish. So I would surmise in the Salinas
18 River Watershed there's less than five hundred fish.

19 MR. BAIOCCHI: Less five hundred, but maybe five
20 hundred?

21 DR. GRAY: Well, no, I would not make that
22 conclusion because National Marine Fisheries --

23 MR. BAIOCCHI: Less than five hundred?

24 DR. GRAY: If there are five hundred fish in five
25 watersheds on the coast, Salinas River is just one of

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1 those watersheds.

2 MR. BAIOCCHI: Okay. Now that you hit on the US
3 National Marine Fishery Service, for the court reporter,
4 I'm going to use the terminology "NMFS."

5 Have you consulted with NMFS concerning the
6 enlargement of the dam?

7 DR. GRAY: No, we have not.

8 MR. BAIOCCHI: You have not consulted with them?

9 DR. GRAY: We prepared an environmental document
10 under CEQA. There was no requirement to consult with
11 federal agencies. There was no federal action involved.
12 So there was no Section 7 consultation required; and,
13 furthermore, the EIR was prepared before the Southern
14 steelhead was listed as a threatened species.

15 MR. BAIOCCHI: But isn't it true that the City of
16 San Luis Obispo pursuant to the Federal Endangered
17 Species Act is going to have to consult with NMFS?

18 DR. GRAY: That's true, and they're aware of it.
19 They've talked to the Corps about it and prepared to
20 enter into a consultation once the federal process
21 starts.

22 MR. BAIOCCHI: In the event that NMFS requires a
23 mandatory daily flow requirement from the dam, City of
24 San Luis Obispo would have to comply with that; isn't
25 that true?

1 DR. GRAY: It's speculative, but if National Marine
2 Fisheries issues a biological opinion --

3 MR. BAIOCCHI: Yes.

4 DR. GRAY: -- to have reasonable and prudent
5 alternatives that require additional flows, the Corps
6 would have to determine whether or not that should be
7 complied with in their action, whether it's a property
8 transfer or 404 permit.

9 MR. BAIOCCHI: And it's the -- Salinas Dam is still
10 under the ownership of the Corps of Engineers?

11 DR. GRAY: That's correct.

12 MR. BAIOCCHI: So there's a nexus between -- we
13 have a federal agency that built the project and is in
14 ownership of the project and you have another federal
15 agency, being NMFS, who's going to, you know, have you
16 folks, City of San Luis Obispo, comply with the
17 provisions of the Federal Endangered Species Act; is that
18 correct?

19 DR. GRAY: That's actually not correct.

20 MR. BAIOCCHI: Pardon me?

21 DR. GRAY: That's not correct. National Marine
22 Fisheries will consult with the Corps of Engineers, and
23 the two federal agencies will determine what's
24 appropriate to comply with the Federal Endangered Species
25 Act. To the extent that the Corps imposes those

1 conditions on the City is speculative. I cannot --

2 MR. BAIOCCHI: In the event there's an agreement
3 reached between yourselves and the Corps of Engineers and
4 you become -- the City of San Luis Obispo becomes the
5 owner, then what? Then what happens?

6 DR. GRAY: Well, you're speculating. I don't know
7 how the Corps and the City would come to agreement, what
8 would be in that agreement. I can't answer that.

9 MR. BAIOCCHI: Well, it wouldn't be speculation
10 because you people are trying to buy the project from
11 a -- based on the testimony here.

12 DR. GRAY: Well, you're asking me to speculate on
13 what might be the agreement between the City and the
14 Corps, and I don't know what that would be.

15 MR. BAIOCCHI: No, I'm asking you whether or not
16 the City would have to comply directly with the
17 Endangered Species Act, federal --

18 DR. GRAY: Well, the City has to --

19 MR. BAIOCCHI: -- once they own the project?

20 DR. GRAY: Well, the City has to comply with the
21 Federal Endangered Species Act at all times.

22 MR. BAIOCCHI: Thank you.

23 DR. GRAY: That applies to federal agencies and
24 private parties.

25 MR. BAIOCCHI: Okay. Thank you very much.

1 The Department of Fish and Game is going to require
2 a 1603 agreement, right?

3 DR. GRAY: I don't know if that's necessarily true.

4 MR. BAIOCCHI: Concerning enlargement of the dam?

5 DR. GRAY: I don't know if that's necessarily true.

6 MR. BAIOCCHI: Thank you.

7 Is there a minimum pool requirement at Salinas
8 Reservoir?

9 DR. GRAY: I have no knowledge of that.

10 MR. BAIOCCHI: Does anyone have any knowledge?

11 Can I rephrase that and make it easier for you?

12 Can I rephrase?

13 MR. SLATER: Sure.

14 MR. BAIOCCHI: Okay. Is there a minimum pool
15 requirement to protect the environmental integrity of the
16 reservoir, the species, et cetera?

17 DR. GRAY: I have no knowledge of that.

18 MR. BAIOCCHI: Okay. Secondly, does the proposed
19 project in the Final EIR, does the City of San Luis
20 Obispo propose to have a minimum pool requirement to
21 protect the integrity of the environment of the
22 reservoir?

23 DR. GRAY: That was not part of the proposed
24 project.

25 MR. BAIOCCHI: Okay. As I understand it, and you

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1 may be aware of this, the dead pool is 2,000 acre-feet of
2 water, dead pool?

3 MR. HUTCHINSON: I know there's a dead pool. Off
4 the top of my head I couldn't tell you the --

5 MR. BAIOCCHI: I think I heard it through
6 testimony. I may be wrong, I'm sorry.

7 MR. RAY: Our understanding is that the dead pool
8 is approximately 2,000 acre-feet.

9 MR. BAIOCCHI: Okay, thank you.

10 Have you done any studies to determine whether or
11 not the dead pool is sufficient to maintain all of the
12 species in the reservoir and the environmental integrity
13 of the reservoir? An example, water quality, water
14 temperatures, dissolved oxygen, et cetera, et cetera?

15 DR. GRAY: No.

16 MR. BAIOCCHI: Okay.

17 I'm getting there, Mr. Brown. I'm sorry.

18 H.O. BROWN: It's all right, Mr. Baiocchi.

19 MR. BAIOCCHI: Thank you very much. I really
20 appreciate this.

21 Commencing with page ten of your testimony going to
22 No. 28 -- Item 28 on the bottom -- or line 28, I'm sorry.

23 DR. GRAY: Okay.

24 MR. BAIOCCHI: Why don't you read that entire
25 paragraph that commences at 26, please, and goes through

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1 line two on page -- the following page, which is not
2 numbered -- which is eleven.

3 DR. GRAY: At line twenty-six, page ten, (reading):

4 No significant adverse defect is expected to occur
5 to wildlife downstream of the dam because no adverse
6 impact or riparian vegetation is anticipated as described
7 above. The riparian habitat downstream of the dam is
8 likely to look the same as it does under current
9 condition. It generally represents poor quality habitat
10 due to the presence of cattle grazing with unrestricted
11 access to the river for the first two and a half miles
12 below the dam.

13 MR. BAIOCCHI: Okay, thank you very much.

14 Now, cattle grazing, the impression I got from your
15 statement here is cattle are out in the stream; is that
16 true?

17 DR. GRAY: The cattle have access to the stream.

18 MR. BAIOCCHI: So there's related water quality
19 problems with cattle being in the stream, is that --
20 aside from habitat?

21 DR. GRAY: First, I want to qualify that the cattle
22 grazing extends down to Los Pilitas Road because that's a
23 parcel that is for cattle grazing. I don't know about
24 access to the river below that point. I suspect there
25 probably is not cattle down there because it's narrow

1 canyon.

2 With regard to water quality problems, I'm not
3 aware of any, did not study it. So I have no opinion on
4 whether there is a water quality problem due to cattle
5 grazing.

6 MR. BAIOCCHI: Wouldn't it be true that if there
7 were larger releases of water from the dam, that would
8 improve water quality?

9 DR. GRAY: That's not necessarily --

10 MR. BAIOCCHI: Whether it be cattle grazing or
11 whatever, water temperatures or what or habitat?

12 DR. GRAY: That's not necessarily true.

13 MR. BAIOCCHI: Is that right?

14 DR. GRAY: That's right.

15 MR. BAIOCCHI: So how do you protect water quality
16 if you don't release cold water for cold water species?
17 I don't understand that.

18 DR. GRAY: Well, let's start with defining water
19 quality. That would help me answer that question.

20 Are you talking about chemical constituents,
21 organics, temperature, turbidity? It would help if you
22 made that more specific.

23 MR. BAIOCCHI: I want to hit on water temperatures
24 with respect to cold water species, dissolved oxygen,
25 things like that.

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1 DR. GRAY: You can improve water temperature by
2 having a more dense riparian canopy cover and you would
3 not need additional water.

4 MR. BAIOCCHI: But you really don't know that
5 unless you do studies; is that true?

6 DR. GRAY: No. I can tell you that if you have a
7 stream that's shaded, it's going to have lower water
8 temperatures than one that's unshaded.

9 MR. BAIOCCHI: Okay. Thank you very much.

10 Getting to Santa Margarita Ranch, and Lorraine
11 Scarpace hit on that, I put together -- and it's one of
12 the exhibits -- a complaint against the ranch. It's
13 before the Board right now and it's being investigated,
14 okay.

15 Tell me if I'm wrong. You're the CEQA expert. My
16 understanding is that -- and I understand that the
17 complaint just came out and I hear a few months back they
18 put in the pumps.

19 Wouldn't it be true, though, in order -- you would
20 have to evaluate the cumulative effects from the ranch's
21 pumps in the event the pump is diverting the underflow --
22 and that's what our complaint is all about. It's a
23 matter of fact, okay. If they were diverting the
24 underflow, it would have some kind of an impact, whether
25 it be on the Live Stream Agreement or on surface -- your

1 capacity, wouldn't it be true -- and that's a future
2 project under CEQA. Wouldn't it be true that you would
3 have to prepare a supplemental EIR to address that
4 matter?

5 MR. SLATER: I'm going to object on the basis that
6 it calls for speculation, assumes facts not in evidence,
7 is a compound question and is otherwise vague and
8 ambiguous.

9 MR. BAIOCCHI: Wait, say it again.

10 H.O. BROWN: Redo the question, Mr. Baiocchi.

11 MR. SLATER: And if we could start with the
12 specific exhibit number to give to the witness so they
13 might know what it is you're talking about, but thus far
14 there's no proof whatsoever as to the extent of this
15 project.

16 MR. BAIOCCHI: But, Mr. Slater, it's under
17 investigation by the Board now.

18 H.O. BROWN: Wait a minute.

19 MR. BAIOCCHI: Pardon me?

20 H.O. BROWN: Talk to me, gentlemen, when you're
21 addressing the issue, not to each other.

22 Mr. Baiocchi, ask the question and break it down.

23 MR. BAIOCCHI: Rephrase the question?

24 H.O. BROWN: Rephrase it and break it down if you
25 can.

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1 MR. BAIOCCHI: In the event there's a complaint
2 before the Board -- and let's start this way here. Let
3 me see if I can find the darn thing --

4 MR. RAY: I think I can answer your question right
5 now, if you'd like.

6 MR. BAIOCCHI: Fine, go for it. Thank you.

7 MR. RAY: There is no requirement under CEQA to go
8 back and keep analyzing every additional project that
9 comes along in the future after you certified your Final
10 EIR.

11 I'll contend again that it's their responsibility
12 to address in their environmental document to keep their
13 project's specific impacts as well as their cumulative
14 impacts of their project with other projects, including
15 the Salinas Reservoir Expansion Project.

16 MR. BAIOCCHI: Let's say an example there was
17 twenty-five pending water rights applications on the
18 river. I know there's one that hasn't been noticed yet
19 for forty-nine acre-feet, okay.

20 You mean to tell me because the Board has not made
21 a determination on those water rights applications that
22 you're not bound by any duty under CEQA to review the
23 cumulative impacts from those future projects?

24 MR. RAY: We made a big effort to obtain any
25 information that was available regarding pending projects

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1 for which permit applications had been submitted, and
2 those are considered in the cumulative impact analysis in
3 the EIR, and obviously there's a cutoff date of which
4 projects we could consider in the EIR and that's standard
5 practice.

6 MR. BAIOCCHI: Standard practice?

7 MR. RAY: You can't keep coming back and
8 supplementing an EIR forever, sir.

9 MR. BAIOCCHI: Even if it had an effect on the Live
10 Stream Agreement, had an effect on your reservoir
11 capacity in the event of the ranch -- Santa Margarita
12 Ranch was going to divert the underflow -- this is what
13 the issue is -- and when you divert the underflow, it
14 pulls -- you know, it pulls surface flows down.

15 I mean, you got a problem.

16 MR. RAY: I understand, but I don't think that
17 falls under the jurisdiction of the CEQA analysis for
18 this project and the timing of the certification of the
19 final EIR.

20 They're obviously going to have to get their own
21 environmental clearances and permits, and they're going
22 to have to do their own cumulative impact assessment.
23 Obviously the City of San Luis Obispo may have concerns
24 about the potential for that project to impact the amount
25 of water that has to be released under the Live Stream

1 Agreement, but at this point I would say that is
2 speculation.

3 MR. BAIOCCHI: But that matter is before the Board
4 now in a formal complaint and they're doing an
5 investigation.

6 That concludes my cross-examination, Mr. Brown. I
7 want to apologize for taking so much time, and I want to
8 thank you for allowing me to do so.

9 MS. SCARPACE: I have just a few short questions
10 for the hydrologist.

11 H.O. BROWN: Okay.

12 MS. SCARPACE: First of all --

13 H.O. BROWN: Use the microphone, please.

14 MS. SCARPACE: In determining the inflow to the
15 Salinas Reservoir, were gauges used on the Salinas River
16 and Alamo Creek to check the accuracy of the inflow data
17 that you used?

18 MR. HUTCHINSON: I simply relied on County data.
19 County data sheets listed inflow number, and that's what
20 I used.

21 MS. SCARPACE: How were those inflow numbers
22 derived?

23 MR. HUTCHINSON: It was my understanding that the
24 inflow number is a residual of the water balance
25 calculation. The diversion is measured. The storage

1 level is measured. The spill is measured in the weir.
2 The downstream releases are measured and so -- the
3 evaporation rate is measured and the rainfall is
4 measured. The surface area of the reservoir is
5 calculated based on the stage of the reservoir. And so
6 when you add up all the inflows and the outflows and the
7 storage changes, the residual is the quote unquote
8 "inflow" from all tributaries, including the mainstem of
9 the Salinas.

10 MS. SCARPACE: And that data is never compared to
11 gauged data for a check on accuracy to make sure that the
12 amount that they calculate as inflow isn't actually less
13 than gauged flows coming in?

14 MR. HUTCHINSON: I don't know. You'd have to ask
15 the County. All I know is the water budget -- or the
16 water balance method, that's the single residual. All
17 the other values are measured. So I don't know. I
18 relied on the County's data.

19 MS. SCARPACE: Isn't it true that under the prior
20 operating manual that they used gauge flows from Salinas
21 River and Alamo Creek to determine the inflow into the
22 reservoir?

23 MR. HUTCHINSON: I know there were gauges in the
24 upper part above the reservoir on various tributaries. I
25 also am aware that those records were very short because

1 they were constantly washing out. I don't know to what
2 extent that work ever -- or those data ever worked into
3 any kind of check on this inflow calculation.

4 Again, I simple relied on the County's data because
5 it was the one single residual in all the other measured
6 numbers, and that's a very common practice given the size
7 of the reservoir and the numerous tributaries that flow
8 into it.

9 MS. SCARPACE: Is there a gauge on the valve that
10 releases water downstream to the Salinas River from the
11 dam? Is there a gauge on that valve?

12 MR. HUTCHINSON: It's my understanding that there's
13 not a gauge on the valve itself, but there is a V-notch
14 weir a short distance down the stream that then can
15 measure the amount of flow that comes out of the valves.

16 MS. SCARPACE: How does that work, briefly?

17 MR. HUTCHINSON: A V-notch weir?

18 MS. SCARPACE: How does that measure the flow?

19 MR. HUTCHINSON: Basically, a V-notch weir is a
20 measure -- or a standard hydraulic structure in which
21 flow passes through it and based on a rating curve you
22 can translate the height of water through the weir into a
23 flow rate.

24 MS. SCARPACE: Do you know what -- well, I may as
25 well cite the page. In the Final EIR on page 3.4-17 they

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1 provide the increased -- the number for increase in
2 evaporation that will result from increasing the level of
3 the dam.

4 I wanted to know if you could find that figure.

5 MR. HUTCHINSON: On page 3.4-17 at the very top it
6 says (reading): The proposed reservoir expansion project
7 would result in an increase of surface area of the lake
8 from a maximum of 730 acres to a maximum of 1,125 acres.
9 This increase in surface area of the lake would result in
10 increased evaporation which is anticipated to result in a
11 peak monthly evaporation loss of 903 acre-feet with an
12 annual maximum average loss of 3,520 acre-feet per year
13 when the reservoir is full.

14 MS. SCARPACE: Okay. Now, let's compare that with
15 the increase in safe annual yield that will go to the
16 City of San Luis Obispo if the dam level is raised.

17 What is that figure for the net increase in
18 acre-feet per year that the City will receive?

19 MR. HUTCHINSON: Well, the average -- the safe
20 annual yield increase is 1650. The raised dam
21 evaporation, average evaporation loss, is 3520. The
22 current evaporation loss is 2770 based on the EIR. So
23 that represents an increase in evaporation on an average
24 annual basis of 750 acre-feet per year.

25 MS. SCARPACE: One point that I'd like you to

1 verify. Isn't the increase in acre-feet per year that
2 the City will acquire from raising the level of the dam
3 roughly half or a little bit half of the increase in the
4 evaporation -- the total evaporation?

5 MR. HUTCHINSON: As I stated, the safe annual yield
6 increase is 1650 acre-feet per year. The increased
7 evaporation associated with the larger reservoir is an
8 average of 750 acre-feet per year.

9 MS. SCARPACE: I thought you just said it was 3,520
10 acre-feet per year?

11 MR. HUTCHINSON: That's -- the current reservoir
12 evaporation is 2770. The evaporation -- average annual
13 evaporation under the raised reservoir is 3520. So the
14 difference between those two is 750. So that's the
15 actual increase of evaporation associated with the larger
16 reservoir.

17 MS. SCARPACE: Did you look at the alternative of
18 piping water from the existing reservoir at Salinas --
19 Salinas Reservoir to Whale Rock Reservoir and -- as a
20 storage place and using the benefit of the decrease in
21 evaporation rate as an alternative method of increasing
22 net yield to the City?

23 MR. HUTCHINSON: I'll let Bobby answer the CEQA
24 alternative question.

25 MR. RAY: That alternative has not been assessed in

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1 detail and it was ruled out early on as being not
2 feasible, the primary reason being that the storage
3 capacity of Whale Rock is so small compared to the
4 storage capacity of Salinas that there isn't excess space
5 within Whale Rock to store much water; and beyond that
6 there are no conveyance facilities for getting the water
7 from Salinas Reservoir to Whale Rock Reservoir. So it
8 was deemed by the City to not be a feasible alternative
9 because it couldn't accomplish the project goals is what
10 it comes down to.

11 MS. SCARPACE: Isn't the storage capacity of Whale
12 Rock approximately 40,000 acre-feet per year if it was
13 reinforced?

14 MR. RAY: I'm not familiar with the actual number
15 of the storage capacity on Whale Rock.

16 MS. SCARPACE: Is anyone on this panel familiar
17 with that?

18 MR. HUTCHINSON: I've not studied Whale Rock in any
19 detail as part of the study.

20 MS. SCARPACE: How could you then conclude that it
21 has insufficient storage capacity if you haven't
22 determined what the storage capacity is?

23 MR. RAY: This was, I believe, an alternative that
24 had been looked at by the City prior to the preparation
25 of the EIR for the Salinas Reservoir Expansion Project

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1 and it was something that had been deemed to be not
2 feasible. If you want to get some more information,
3 perhaps we could get some input from a City
4 representative.

5 MS. SCARPACE: I have one more question concerning
6 that. Doesn't the City of San Luis Obispo have an
7 existing easement and pipeline from Whale Rock Reservoir
8 to the City of San Luis Obispo?

9 MR. RAY: Yes, they do and it flows in the
10 direction from Whale Rock towards the City.

11 MS. SCARPACE: Wouldn't it be possible to locate
12 another parallel pipe or line in the same easement going
13 to the -- from the City to Whale Rock flowing in the
14 opposite direction if there was a pipe -- a pump?

15 MR. RAY: Technically, surely. I mean, physically,
16 yes, that is a possibility. Obviously there would have
17 to be environmental reviews, et cetera, and a cost
18 associated with that. To the extent that it crosses
19 private lands, et cetera, you might have to get private
20 land approval or condemned land. There's a lot of
21 unknowns.

22 MS. SCARPACE: And isn't it also true there's a
23 pipeline from the Salinas Reservoir to the City of San
24 Luis Obispo delivering water to the City of San Luis
25 Obispo?

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1 MR. RAY: That is correct.

2 MS. SCARPACE: So you would -- isn't it true you
3 would only have to extend that existing pipeline to the
4 existing easement from San Luis Obispo to Whale Rock in
5 order to put another pipeline -- a parallel pipeline
6 through?

7 MR. RAY: I don't know all the details what would
8 be required. That sounds logical.

9 MS. SCARPACE: So, in other words, that's just an
10 alternative that wasn't explored in the EIR?

11 MR. RAY: It was an alternative that had been
12 considered previously and had been removed from further
13 consideration.

14 MS. SCARPACE: Thank you.

15 MR. BAIOCCHI: Mr. Brown. I got passed a question
16 and I overlooked it. If you call me out of order, then I
17 won't ask it; but it's pertinent.

18 H.O. BROWN: You can ask the question.

19 MR. BAIOCCHI: The gentleman that managed the CEQA
20 process, I got a note passed to me that says that the
21 Final EIR was certified June the 2nd, 1998.

22 Is that true?

23 MR. RAY: That is correct.

24 MR. BAIOCCHI: Then I also have the same note that
25 says steelhead on the Salinas were listed August of '97.

1 MR. RAY: That is correct, and that's pointed out
2 in the Final EIR.

3 MR. BAIOCCHI: So the steelhead were listed prior
4 to the Final EIR being certified?

5 MR. RAY: That's correct. They were not listed
6 prior to issuance of the revised Draft EIR in May 1997,
7 however.

8 MR. BAIOCCHI: Okay, thank you.

9 H.O. BROWN: Okay, does that conclude your cross?

10 MR. RAY: Could I just add --

11 MS. SCARPACE: I just had a -- go ahead.

12 MR. RAY: I just want to add one more point.

13 I now remember that there was a concern also about
14 transfers from Salinas to Whale Rock related to potential
15 transport of non-native fish species to Whale Rock and a
16 concern for the trout fishery in Whale Rock Reservoir.

17 MS. SCARPACE: Okay, thank you.

18 I just had a couple quick questions.

19 H.O. BROWN: Go ahead.

20 MS. SCARPACE: In making your calculations
21 regarding flows downstream of the Salinas Dam and
22 tributary flows from gauges -- tributary flows into the
23 Salinas River below the dam, did you use County daily
24 flow and data that's provided in this -- this is
25 subpoenaed material from Glenn Britton of the County of

1 San Luis Obispo. I'd like you to take a look at it.

2 MR. HUTCHINSON: This contains a wide variety of
3 different pieces of information. There seems to be
4 something labeled County of San Luis Obispo Salinas River
5 below Salinas Dam, Station No. 8, Rating Table No. 2,
6 Drainage Area Equals 112 Square Miles. Discharge in
7 Cubic Feet Per Second, and then there's water year
8 October '93 to September '94, October '94 to September
9 '95, '95/'96, '96/'97, '97/'98 and these are daily flows
10 in cfs.

11 So we looked at -- I am not familiar with -- this
12 format looks more like a USGS format. We used the County
13 records that were in whatever appendix and exhibit I just
14 looked at with Mr. Baiocchi.

15 Then there's some hourly instantaneous data. The
16 format is not very useful. Then there's a number of
17 sheets that look like Salinas River above Pilitas Creek.
18 There's Pilitas Creek. These are records that are back
19 from the early '50s. It is the gauging stations I had
20 mentioned earlier that I was aware of that had been --
21 only had a very short record of data. These data we
22 obtained from the USGS and looked at. Pilitas Creek.
23 We've got more Pilitas Creek through the '60s.

24 I'm just kind of flipping through this. There's
25 just a number of kind of records related to the like,

1 Nacimiento River, Australia River near Australia, Salinas
2 River at Paso Robles, Salinas River near Pozo, Toro Creek
3 near Pozo.

4 We used a variety of pieces of data, and I've
5 summarized that in the EIR. We used the County
6 operations records to deal with reservoir inflow,
7 reservoir outflow, diversions, that class, you know, in
8 terms of the operation of the reservoir. We used USGS
9 records at Paso Robles. We used USGS records for the
10 mainstem flow at Bradley where Nacimiento comes in.

11 So we looked at tributary inflows in the sense that
12 at each one of these gauging stations there was an
13 increase in flow, and that is attributable to tributary
14 inflow. We were focused on impacts to the mainstem of
15 the Salinas. There would be no impacts on the
16 tributaries because the project doesn't directly affect
17 them. They still will contribute the same amount of flow
18 with or without the project to the mainstem.

19 MS. MROWKA: If I might interrupt for a moment for
20 record keeping purposes.

21 Ms. Scarpace, the material you just had
22 Mr. Hutchinson review is not yet labeled as an exhibit.

23 Is there going to be a proposed exhibit number?

24 MS. SCARPACE: Yes, I would like it labeled as an
25 exhibit.

1 MS. MROWKA: And if you would please denote that
2 exhibit number for me.

3 MS. SCARPACE: I believe it would be double "F."

4 MS. MROWKA: Thank you. And are you going to make
5 copies available?

6 MS. SCARPACE: Yes, I have copies in that box and
7 they're available for the Board and for opposing counsel
8 and the City of Paso Robles.

9 MS. MROWKA: And if you would please give me the
10 title for your proposed exhibit.

11 MR. BAIOCCHI: Pardon me?

12 MS. MROWKA: I need the title for the proposed
13 exhibit.

14 MS. SCARPACE: They were in response to a subpoena
15 to the County, and they covered inflow data into the
16 Salinas Reservoir and also data from gauge stations of
17 the tributaries to the Salinas River and what it shows
18 is --

19 MS. MROWKA: Just need the title at this junction,
20 thank you.

21 MS. SCARPACE: Oh, okay.

22 H.O. BROWN: All right, we'll pass those out.

23 Do you have them available now?

24 MS. SCARPACE: Yes, they are available.

25 H.O. BROWN: Okay. Perhaps you could pass those

1 out at the break we're about to take.

2 Does that conclude your cross then, Ms. Scarpace?

3 MS. SCARPACE: Yes, it does.

4 H.O. BROWN: Ms. Cahill, I believe you're up when
5 we come back from our break. We'll have a 10-minute
6 break now and, Ms. Scarpace, if you would pass out the
7 copies of the exhibits.

8 (Whereupon a recess was taken.)

9 H.O. BROWN: Back on the record.

10 Ms. Cahill, you're up.

11 MS. CAHILL: Yes, thank you.

12 ----oOo----

13 CROSS-EXAMINATION OF SAN LUIS OBISPO

14 BY CITY OF PASO ROBLES

15 BY MS. CAHILL

16 MS. CAHILL: I'm going to start with some questions
17 for Mr. Hutchinson, but the first one is one where I just
18 want to clarify an apparent discrepancy.

19 There was just a series of questions about
20 evaporation that seemed to conclude that the change in
21 average evaporation -- am I on -- that the change in
22 average evaporation as a result of the reservoir
23 expansion project would be 750 acre-feet a year.

24 I'd like to ask our panel to turn to the volume of
25 the Final EIR that contains the responses to comments and

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1 to look to the response to Comment 28-9.

2 MR. RAY: This is on the revised draft?

3 MS. CAHILL: Well, that's interesting. It's -- at
4 the bottom of the page there's R28-9. This is an FEIR
5 response.

6 MR. RAY: Yes, yes, it's the revised draft. That's
7 what the "R" is for.

8 MS. CAHILL: Okay. So it's the response to 28-9.

9 Could you read that, please?

10 MR. HUTCHINSON: (Reading) Average evaporation
11 losses for the current reservoir estimated to be 2359
12 acre-feet. Average evaporation losses for the expanded
13 reservoir are estimated to be 3896 acre-feet per year.
14 Details are provided in Section K-A in the Appendix K in
15 the Final EIR.

16 What I was reading from before was page 3.4-16
17 which had -- I think we're dealing with different time
18 periods.

19 MS. CAHILL: Okay, yeah, can we clarify? I mean,
20 we seem to have two -- let's do the difference here. Can
21 you do the difference according to the response numbers?

22 MR. HUTCHINSON: 3896 minus 2359 is 1537.

23 MS. CAHILL: Okay. So if 1537 were the average
24 evaporation loss increase due to the expanded reservoir,
25 that's roughly equivalent to the new safe yield of the

1 project; is that right?

2 MR. HUTCHINSON: Yeah. The safe annual yield
3 increase is 1650 acre-feet per year.

4 H.O. BROWN: Pull the microphone around to you,
5 Mr. Hutchinson.

6 MR. HUTCHINSON: I'm sorry.

7 The average safe annual yield increase is 1650
8 acre-feet per year.

9 MS. CAHILL: Okay. And according to this comment,
10 the increase in evaporation would be 1537 acre-feet?

11 MR. HUTCHINSON: Correct.

12 MS. CAHILL: Okay. But how do we reconcile -- how
13 do we know which set of evaporation numbers to believe?

14 MR. HUTCHINSON: All I can tell you is that on page
15 3.4-16 of the FEIR this says evaporation from the lake
16 has been -- "has been" twice -- calculated to be an
17 average of 2770 acre-feet per year based on data from
18 1970 to 1996. And so the 2770 is compared to the 2359,
19 at least in terms of the current -- you know, current dam
20 situation.

21 On page 3.4-17 of the Final EIR it states that the
22 average evaporation -- okay, an annual maximum average
23 loss of 3520. And this says the average evaporation loss
24 is 3896 on Response 28-9.

25 MS. CAHILL: Okay. So in terms of 28-9 in terms of

1 average evaporation losses --

2 MR. HUTCHINSON: Okay, I see where we are. That is
3 a reference -- the 3520 annual maximum average loss of
4 3520 acre-feet per year when the reservoir is full,
5 there's a citation to City of San Luis Obispo 1992(b).

6 So that was an estimate that was made by the City.

7 MS. CAHILL: Okay.

8 MR. HUTCHINSON: In Response 28-9 the references to
9 Section K-A of Appendix K, which is the --

10 MS. CAHILL: And Appendix K you did?

11 H.O. BROWN: One at a time.

12 MR. HUTCHINSON: Which is what I did based on the
13 model.

14 MS. CAHILL: Okay. So based on the model, would
15 these figures be accurate in this response?

16 MR. HUTCHINSON: These -- the figures in Response
17 28-9 were based on the model simulations of comparing the
18 raised -- or the current reservoir with the raised
19 reservoir, and that's under operational conditions that
20 do not necessarily reflect true historic operations
21 because we were dealing with an increased demand
22 estimate.

23 MS. CAHILL: But that would be on the same basis
24 and the same model that all of your other work was done,
25 all your spill release, spill reduction numbers?

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1 MR. HUTCHINSON: Exactly.

2 MS. CAHILL: So to be consistent with all the other
3 numbers we're using in the hydrology, this would be good
4 to use these for evaporation figures?

5 MR. HUTCHINSON: These would be evaporation figures
6 that would be an apples to apples comparison with all the
7 other numbers, that's correct.

8 MS. CAHILL: Okay, thank you.

9 The usable capacity of the existing reservoir is
10 approximately 23,843 acre-feet; is that correct?

11 MR. HUTCHINSON: That sounds about right, yes.

12 MS. CAHILL: I think it's page one, line twenty-two
13 probably, of your testimony.

14 MR. HUTCHINSON: 28,843.

15 MS. CAHILL: Okay. And the average inflow to the
16 reservoir, according to Exhibit A to your testimony, is
17 21,150 acre-feet?

18 MR. HUTCHINSON: That is based on the 54-year
19 record, as the citation notes.

20 MS. CAHILL: Okay.

21 MR. HUTCHINSON: The 21,150.

22 MS. CAHILL: So the reservoir can at this point in
23 time -- the existing reservoir can store a whole year's
24 inflow? Not every year but it could --

25 MR. HUTCHINSON: If the reservoir were completely

1 empty and there was an average flow year, it would
2 fill -- it would nearly fill the reservoir up and still
3 have a little bit of space left.

4 MS. CAHILL: Okay. And how large will the
5 reservoir be when it's expanded?

6 MR. HUTCHINSON: The estimate is -- the number is
7 41,792.

8 MS. CAHILL: Okay. And so when it's expanded, its
9 capacity is roughly twice an average year's inflow; is
10 that correct?

11 MR. HUTCHINSON: Again, assuming the reservoir was
12 dead empty you could take two years of inflow and you
13 would actually overtop a little bit after the second
14 year.

15 MS. CAHILL: Okay.

16 MR. HUTCHINSON: If you had two average inflow
17 years.

18 MS. CAHILL: Okay. And, in fact, the average
19 inflow number is rather heavily influenced by very few
20 high flow years, isn't it?

21 MR. HUTCHINSON: Typically in Californian an
22 average year is not something you would see year in and
23 year out, but it's truly a mathematical average of dry
24 years and wet years.

25 MS. CAHILL: Okay. Isn't the median inflow often

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1 used?

2 MR. HUTCHINSON: Used for what?

3 MS. CAHILL: Used for judging -- for water
4 resources planning. Isn't it used for various purposes?

5 MR. HUTCHINSON: It depends on your objective. In
6 certain instances averages work. In certain instances
7 you need to look at year by year, and you may use
8 averages simply for frame of reference type of
9 discussions and not really for impact analysis; and in
10 this case we did not use any averages for our quote
11 unquote "impact analysis." We simply provided them as a
12 frame of reference. The detailed impact analyses were
13 done on a year-by-year basis.

14 MS. CAHILL: Okay. If we were to determine the
15 median inflow -- let's see, I don't know if we're going
16 to be able to do that from Table 3.4-1.

17 Have you attempted ever to calculate what the
18 median inflow is into the reservoir?

19 MR. HUTCHINSON: I never calculated it because it
20 would -- it provided no useful information with regard to
21 the impact analysis.

22 MS. CAHILL: Okay. Well, in the event that it
23 might be useful for the Board to have a sense of what the
24 median inflow is, can you find a table that might help
25 you figure that out and tell me whether you think it's

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1 approximately 11,000 acre-feet a year?

2 MR. HUTCHINSON: I wouldn't -- I've never done that
3 calculation. It would require essentially sorting the
4 data.

5 MS. CAHILL: Okay. But we could take one of the
6 tables that gave yearly inflows and count what half is
7 above and half is below and come up with the median?

8 MR. HUTCHINSON: It's possible to do it.

9 MS. CAHILL: And would you expect it to be lower
10 than the average given the few high years that affect the
11 average?

12 Actually, let me put one up -- or if you would just
13 turn to Table 3.4-2 -- well, I guess we can -- does Table
14 3.4-2 in the last column show the inflow to the
15 reservoir?

16 MR. HUTCHINSON: Yes, it does.

17 MS. CAHILL: Okay, thank you. Based now on Table
18 3.4-1, which is the table before that, does this table
19 show the historic relationship of the City water
20 diversions to the inflow and the downstream discharges?

21 MR. HUTCHINSON: This is a table that has columns
22 that are labeled "Year Inflow," "Downstream Discharge"
23 and "Pipeline Diversion To City," and then the final
24 column is a time frame because the period of reporting
25 changed from time to time in terms of what constituted a

1 year.

2 MS. CAHILL: Okay. Let's go down to the "Totals"
3 column. The average inflow is 20,524 acre-feet; is that
4 correct?

5 MR. HUTCHINSON: That's what it says, yes.

6 MS. CAHILL: Okay. And the downstream discharge is
7 14,133?

8 MR. HUTCHINSON: That's correct.

9 MS. CAHILL: Okay. So what percentage of the
10 inflow is being captured by the existing dam,
11 approximately one third?

12 MR. HUTCHINSON: I'm sorry, how much?

13 MS. CAHILL: What percentage of the inflow is being
14 captured by the existing dam? Isn't it true --

15 MR. HUTCHINSON: 20,524 flow into it and are
16 captured by the dam. Once it's held in storage, it
17 either evaporates, it is discharged downstream or it is
18 diverted to the City. So in a narrow sense all of it is
19 captured by the dam, and it can go one of three places.

20 MS. CAHILL: All right. Is it accurate to say that
21 the downstream discharge is only two thirds the amount of
22 inflow at the present time?

23 MR. HUTCHINSON: Well, to do that you would take
24 14,133, which is the average downstream discharge, and
25 divide it by 20,524, which is the total inflow, and you

1 wind up with 68 percent -- 68.86 percent of the inflow
2 passes -- in essence, passes through the reservoir.

3 MS. CAHILL: Okay. So approximately two thirds is
4 passing through now and one third is no longer passing
5 through?

6 MR. HUTCHINSON: One third is either -- yeah, two
7 thirds passes through and roughly one third is either
8 diverted to the City or it evaporates.

9 MS. CAHILL: Okay. Now, if we could put up Table
10 3.4-13. Did you prepare this table?

11 MR. HUTCHINSON: Yes, I did.

12 MS. CAHILL: Okay. In column -- in the column
13 entitled "Historic Spill" --

14 MR. HUTCHINSON: Uh-huh.

15 MS. CAHILL: -- is the average historic spill
16 16,175?

17 MR. HUTCHINSON: That's what it says, yes.

18 MS. CAHILL: Okay. And the spill -- let's go over
19 to your historic -- it's the one that says "Calculated
20 Downstream Flow Reductions" and then there's a column
21 that says "Historic" and "Existing Dam."

22 MR. HUTCHINSON: Uh-huh.

23 MS. CAHILL: And look down to the bottom, the
24 average 2,700. Is this the average amount by which the
25 flows will be reduced in the future by the existing

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1 reservoir as the use builds up by the City to reach the
2 10,000 acre-foot demand?

3 MR. HUTCHINSON: This column relates -- this is
4 a -- in 1972, for example, you see that there was an
5 historic spill of 716 acre-feet. Under the existing dam,
6 under 10,000 acre-foot demand there would have been no
7 spill. Under the raised dam under a 10,000 acre-foot
8 demand scenario there would have been no spill.

9 MS. CAHILL: All right. I'm not asking --

10 MR. HUTCHINSON: So, therefore, this -- I'm trying
11 to explain how the column was calculated.

12 Therefore, historic spill minus existing dam spill
13 is 716 acre-feet. So with or without the project, there
14 would have been -- if the demand had been 10,000
15 acre-feet per year instead of what the demand actually
16 was in 1972, that 716 acre-feet of spill would not have
17 occurred.

18 MS. CAHILL: Right. And so at the bottom in the
19 average, the 2,700, doesn't this reflect operations of
20 the existing reservoir with a greater demand -- with the
21 demand that you put in as the future demand?

22 MR. HUTCHINSON: It's the current reservoir with a
23 higher demand.

24 MS. CAHILL: Right.

25 MR. HUTCHINSON: That's correct.

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1 MS. CAHILL: And so we would expect over time that
2 even operations of the existing reservoir would reduce
3 spills by an average of 2,700 acre-feet; is that correct?

4 MR. HUTCHINSON: That's absolutely correct.

5 MS. CAHILL: All right. In the next column, the
6 historic and the raised dam, the 4,741 acre-feet, is that
7 correct, that's the average of the reduced spills caused
8 by the increased dam?

9 MR. HUTCHINSON: This is the "Historic Minus Raised
10 Dam" column?

11 MS. CAHILL: Right.

12 MR. HUTCHINSON: Again, that reflects what the
13 historic spill was minus what the raised dam spill was.
14 So now you're looking at the -- essentially the effects
15 of not only the increased demand but also the raised dam.

16 MS. CAHILL: Okay, all right. So if the historic
17 spill is 16,175 acre-feet and we are going to have a
18 reduction with the expanded project of 4,741 acre-feet,
19 in the future -- let me rework -- let's go back now,
20 Eric, if we could, to Table 3.4-1.

21 MR. ROBINSON: The later years?

22 MS. CAHILL: Right. So if the inflow is 20,524
23 acre-feet on average and historically we had a downstream
24 discharge of 14,133, but in the future the spills will be
25 reduced by 4,741, in the future the downstream discharge

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1 will be reduced by 4,741 on the average; isn't that
2 correct?

3 MR. HUTCHINSON: Well, we're getting a little ahead
4 of ourselves here because you're working with averages
5 from tables that have two different time periods. We did
6 not look at these averages and draw any conclusions
7 relative to significance/insignificance with respect to
8 averages or percentages or anything like that. We looked
9 at things year by year in terms of our analysis.

10 So in the context of trying to understand
11 qualitatively, yes, if you reduce -- if you increase the
12 diversion and the inflow doesn't change, obviously
13 there's going to be a reduction in downstream release.

14 MS. CAHILL: Right.

15 MR. HUTCHINSON: And that holds whether you're
16 looking at an individual year or averages or anything. I
17 just don't want to get caught into this issue of the
18 average numbers and how they differ, because we're
19 dealing with two different time periods in these two
20 tables and we're also dealing with an analysis that
21 focused on year-by-year spill reductions not on averages.

22 MS. CAHILL: Okay. But, in general, in the future
23 downstream people will have less water coming down the
24 Salinas River in the future than they have over the past
25 twenty years just because of increased demand if, in

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1 fact, the City of San Luis Obispo operates to its 10,000
2 demand scenario that you modeled?

3 MR. HUTCHINSON: Assuming there's no change in the
4 hydrology, any increase in demand which results in an
5 increase in diversion would result in less water going
6 down the stream.

7 MS. CAHILL: Okay. And when the dam is expanded
8 and even more water is captured and spills are reduced,
9 the downstream flows will be reduced even further; isn't
10 that correct?

11 MR. HUTCHINSON: The increased dam -- the
12 increase-sized reservoir does have the effect of reducing
13 downstream spills in wet years. The key to this whole
14 thing is that the downstream impacts in terms of flow
15 reductions occur when there's already a lot of water.

16 For example, if you look at -- not on this table
17 but on Table 13 you can see where there's an actual
18 reduction is when there's already, you know, 20, 30, 40,
19 50,000 acre-feet of water in the system already.

20 MS. CAHILL: Okay. But I'd just like to follow up
21 on my line of thought. There will be less water coming
22 down recharging the alluvium as a result of the expanded
23 project?

24 MR. HUTCHINSON: Not necessarily. There is less
25 water being released out of the reservoir. That's

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1 different than -- now you're attaching the significance
2 to the quote.

3 MS. CAHILL: There will be less water coming out of
4 the reservoir?

5 MR. HUTCHINSON: That's correct.

6 MS. CAHILL: And, in fact, if we look back at Table
7 3.4, and I know you're not liking to use averages, but we
8 did a calculation from that table that indicated that at
9 this point in time approximately two thirds of the inflow
10 is released downstream, or sixty-eight percent I think
11 you calculated.

12 Okay. With the expanded reservoir when we have
13 this additional average of 4,700 acre-feet in reductions,
14 will it be approximately half of the inflow that -- only
15 half that will be released?

16 I mean, roughly I would think you could take the
17 20,000 acre-foot average and add the 4,700 -- well, no,
18 that's inflow. I'm sorry, the inflow stage you could
19 take --

20 MR. HUTCHINSON: You could do anything with the
21 numbers.

22 MS. CAHILL: You take twenty and minus the fourteen
23 and you get seven --

24 MR. HUTCHINSON: Here's the bottom line --

25 H.O. BROWN: Wait a minute. Wait a minute. Wait,

1 wait, wait.

2 MS. CAHILL: I'm sorry.

3 H.O. BROWN: The reporter's good, but she can't
4 take two of you at once.

5 MR. HUTCHINSON: I'm sorry.

6 MS. CAHILL: Let me ask a simple question and start
7 over.

8 Isn't it true that after the reservoir expansion,
9 the downstream releases will be only, on average,
10 approximately half of the inflow?

11 MR. HUTCHINSON: We didn't make a conclusion along
12 those lines. We simply stated -- as I stated, we had a
13 three-part analysis. The first part of the analysis was
14 to estimate the reduced flows or reduced spills as a
15 result of the project.

16 MS. CAHILL: But, Mr. Hutchinson --

17 MR. HUTCHINSON: -- and qualitatively we say that
18 there is a reduction in spills under the expanded
19 reservoir. To put numbers in terms of percentages and
20 averages and all that sort of thing attaches or connotes
21 a significance to two thirds, ten percent, twenty
22 percent. It simply is irrelevant.

23 The analysis revolves around year-by-year analyses,
24 taking into account wet years, dry years, all those sorts
25 of things, as the EIR is replete with the number of

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1 commentors who tried to take the numbers and prove a
2 point with them. And we basically are saying, "Yes" --
3 and we've even acknowledged that in the comments.
4 Mathematically all those number generations are correct.

5 The trick is to turn those numbers into something
6 of hydrologic significance in terms of groundwater flow,
7 groundwater recharge, well water in wells, or in terms of
8 biological impacts. And that's what we attempted to do
9 through the course of developing this report and this
10 analysis.

11 MS. CAHILL: You can't tell us sitting here
12 whether, over the period of time that you modeled, the
13 expanded reservoir will capture half of the inflow
14 roughly, whether or not it will?

15 MR. HUTCHINSON: Depends on what the starting
16 storage condition is on a particular year, what the
17 character of the inflow is, what the character of the
18 downstream flow is in terms of live stream releases.
19 There's a lot of factors we determine on a year-by-year
20 basis what the actual capture -- percentage, if you will,
21 will be.

22 Over the long term, you can make some estimates
23 based on these averages. Unfortunately, that -- the
24 Table 3.4-1 doesn't reflect anything with regard to the
25 simulations we made. That is simply a summary of

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1 historic operations.

2 MS. CAHILL: You made an interesting statement in
3 your testimony, and it sounds like you're almost making
4 it again here.

5 On page five of your testimony you say (reading):
6 Although a summary of my conclusions is provided on pages
7 3.4-19 and 3.4-20 of the Final EIR in terms of averages,
8 these averages are provided simply as a frame of
9 reference. No significance is attached to these numbers
10 whatsoever.

11 Is that correct?

12 MR. HUTCHINSON: That is correct in the context of
13 the first part of the analysis which revolved around
14 estimating the spill reductions. The context of that
15 statement revolves around pages 319 and 20 --

16 MS. CAHILL: Why are we putting in numbers that
17 have no significance?

18 MR. HUTCHINSON: They have significance in terms of
19 a frame of reference. In term of using averages --
20 average flow reductions to evaluate whether there is a
21 significant impact on Atascadero or, you know, Whales is
22 not appropriate. We're dealing with a hydrologic system
23 where these impacts, these flow reductions occur in wet
24 years.

25 MS. CAHILL: Okay. Let me -- let's put up, if we

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1 could, Table 3.4-13 again and let's look at the last
2 column.

3 Do you attribute any significance to these project
4 impact percentages in the last column on Table 3.4-13?

5 MR. HUTCHINSON: I do not and, in fact, that was
6 the subject of a number of comments in the EIR, most
7 specifically Comment Letter No. 3, and there is --
8 there's actually four comments associated with that that
9 we comment -- or Response 3-1, 3-2, 3-3 and 3-4 that take
10 you through three fourths of a page of responding to this
11 comment that somehow these numbers are important.

12 MS. CAHILL: Okay. In fact, there isn't much
13 logic -- that last column shows -- is derived, in effect,
14 isn't it, by dividing the -- it's so hard to explain what
15 you even did.

16 You took a number that was the difference in flow
17 reductions between the existing dam and the raised dam,
18 both of which were on a 10,000 acre-foot demand, and then
19 divided by historic -- historic flows that were not based
20 on a 10,000 acre-foot demand; is that correct?

21 You know, because I'm mindful of the Hearing
22 Officer's comment on time, I think so long as you agree
23 that that last column has no significance we don't need
24 to figure out how you derived it.

25 MR. HUTCHINSON: It never did in all the --

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1 MS. CAHILL: Okay.

2 MR. HUTCHINSON: -- in the response to comments,
3 which is in Appendix J of the Final EIR, Comment Letter 3
4 at page R3-1 goes to that issue directly.

5 MS. CAHILL: Okay. Let's put up Table 1 from
6 Appendix L.

7 Now, Dr. Gray, you were responsible for Appendix L,
8 were you?

9 DR. GRAY: That's correct.

10 MS. CAHILL: But this is data that Mr. Hutchinson
11 prepared and gave to you?

12 DR. GRAY: Table 1 is based on information that
13 Mr. Hutchinson gave me.

14 MS. CAHILL: Okay. So if we really want to
15 understand what difference the expansion project is going
16 to make compared to the existing reservoir and assuming
17 that the existing reservoir is operated at the capacity
18 that you put into your spread sheet model, does Table 1
19 do that?

20 If you look at existing -- well, if we're looking
21 at spills -- okay, the "Spill Reduction" column here,
22 which is the fourth column on Table 1 of Appendix L, does
23 it show the reduction in spills that can be expected due
24 to the Salinas Reservoir Expansion Project in the years
25 listed?

1 MR. HUTCHINSON: Yes.

2 MS. CAHILL: Okay. And the following column, does
3 that column give us the percentage by which spills are
4 reduced as a result of the Reservoir Expansion Project?

5 MR. HUTCHINSON: That's what it says, yes.

6 MS. CAHILL: Okay. So for 1945 that percent is
7 forty-five percent?

8 MR. HUTCHINSON: By dividing 1102 by 2471 you get
9 forty-five percent.

10 MS. CAHILL: Okay. And in 1952 the spill reduction
11 is eighty-three percent?

12 MR. HUTCHINSON: Given that there's 17,960
13 acre-feet of a spill reduction, divided by an existing
14 spill amount or a spill amount under the existing dam of
15 21,584 you get eighty-three percent.

16 MS. CAHILL: Okay. And in 1958 the percentage is
17 twenty-two percent?

18 MR. HUTCHINSON: That's correct, using the same
19 method.

20 MS. CAHILL: Okay. And in 1962 it's a hundred
21 percent?

22 MR. HUTCHINSON: Given that there was only -- on
23 the existing dam only a spill of 1830 acre-feet and under
24 the increase there would be zero, that's a hundred
25 percent reduction but of a very small spill.

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1 MS. CAHILL: Okay. And in '67 the percentage of
2 reduction is thirty-two percent?

3 MR. HUTCHINSON: It's thirty-two percent but that's
4 based on -- even under the increased reservoir of a spill
5 of 32,934 acre-feet.

6 MS. CAHILL: Okay. And in 1973 sixty-two percent?

7 MR. HUTCHINSON: That's correct.

8 MS. CAHILL: And in 1979 thirty percent?

9 MR. HUTCHINSON: 1979 there was a -- '79's an
10 interesting year because it was followed by -- or it was
11 preceded by an extremely wet year, 1978, and there was
12 a -- '79 was a fairly average year, but because the
13 reservoir was already starting very full you wound up
14 with a small spill either way and the difference is
15 thirty percent.

16 MS. CAHILL: Okay.

17 MR. HUTCHINSON: If we contrast that to '69 when
18 you had 115,000 acre-feet spilled in the existing dam,
19 but even with the dam expanded you'd still wind up with a
20 spill of 114,000 acre-feet. So when the big flows come,
21 they're still going to move down the system.

22 MS. CAHILL: Right. '69 was the year that probably
23 everything was recharged?

24 MR. HUTCHINSON: Yep.

25 MS. CAHILL: More than. Okay, let's look at '93.

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1 What was the spill reduction percentage in 1993?

2 MR. HUTCHINSON: 1993 is the year where we were
3 coming out of the longest drought -- the longest, deepest
4 drought and which actually rewrote a lot of the safe
5 yield calculations, as the City had testified to.

6 In that year under the existing dam there would
7 have been a 30,323 acre-foot spill. Under the raised dam
8 given the same hydrologic conditions you would still have
9 a spill of 12,573.

10 MS. CAHILL: Okay. Isn't it exactly a year like
11 1993 that the alluvium and the groundwater basins are
12 most in need of recharge, in a wet year after a series of
13 dry years?

14 MR. HUTCHINSON: It depends on the groundwater
15 basin. It depends on the characteristics, the pumping
16 history, the size, the geometry, all that.

17 MS. CAHILL: But as a general principle, following
18 a period of dry years your basins are most in need of
19 water? They've been drawn down by years of low recharge?

20 MR. HUTCHINSON: I think it's safe to say after a
21 five-year drought surface reservoirs, groundwater
22 reservoirs all are in need of rainfall and recharge and
23 recovery.

24 MS. CAHILL: Okay. And do you find that the
25 greatest spill reductions are typically in wetter year

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1 types following a series of dryer year types?

2 MR. HUTCHINSON: The analysis showed that the
3 impacts -- the flow reductions were greatest in wet years
4 that were followed -- that were preceded by one or more
5 dry years.

6 MS. CAHILL: Okay, thank you. You ran the model
7 with the demand of 10,000 acre-feet, is that correct,
8 your spread sheet model?

9 MR. HUTCHINSON: A City demand of 10,000 acre-feet,
10 that's correct.

11 MS. CAHILL: Right. And why did you use a demand
12 that's greater than the actual demand value of 9,000?

13 MR. HUTCHINSON: We wanted to look at worst case
14 conditions.

15 MS. CAHILL: Okay.

16 MR. HUTCHINSON: The actual buildout projection was
17 something a bit over 9,000 acre-feet but in order to be
18 worst case and conservative in our analysis we wanted to
19 look at -- we decided to use 10,000 acre-feet, basically
20 round it up to be safe and to be conservative.

21 MS. CAHILL: Okay. Actually, I just thought of one
22 last question I wanted to ask on Table 1. So I'm going
23 to kind of break the thought.

24 When we have the "Percentage Reduced" column at the
25 bottom, there is a total and then there's average and

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1 there's seventeen percent. Perhaps, Dr. Gray, you're the
2 one that can tell me is that seventeen percent intended
3 to be the average of the percentages in that column or
4 the average percent reduced comparing the total numbers?

5 DR. GRAY: It's the latter.

6 MS. CAHILL: It's the latter, okay. I would
7 suggest that number is not correct, but I don't think
8 we're going to take the time to have somebody recalculate
9 it.

10 Okay. If you use the 10,000 acre-foot demand to
11 get sort of the worst case scenario, aren't you, in fact,
12 overstating the effect of the existing reservoir which
13 might then understate the change occasioned by the
14 expansion?

15 MR. HUTCHINSON: The project is increasing the size
16 of the reservoir. The project is not increased demand
17 through population growth. So we limited our evaluation
18 to simply looking at what would happen -- because, in
19 essence, whether the reservoir is increased or not,
20 demand in the City is going to increase. So we simply
21 limited our focus and our attention to the project, which
22 is the increased size of the reservoir, and did not
23 consider the impacts or effects of an increased
24 population.

25 MS. CAHILL: That isn't really what I asked.

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1 What I really asked is by using 10,000 instead of
2 9,000, which I think in your testimony was considered the
3 actual demand, aren't you, in fact, making the existing
4 reservoir with its buildup use, aren't you showing more
5 impact from the existing reservoir than it's really
6 likely to have?

7 MR. HUTCHINSON: I'm not sure I understand. If --
8 we're using the two in a comparative mode where we're
9 looking at the raised dam versus the existing dam using
10 the same demand.

11 MS. CAHILL: Right. But we might have gotten
12 different numbers if we had used 9,000.

13 MR. HUTCHINSON: 9,000 for one scenario and 10,000
14 for the other?

15 MS. CAHILL: No, 9,000 for both.

16 MR. HUTCHINSON: 9,000 for both you may wind up
17 with different numbers for each of the scenarios, but
18 what we were focused on was the difference. And without
19 having actually made that run I couldn't speculate as to
20 whether the -- by using 10,000 versus 9,000 we actually
21 understated or overstated the impacts in comparison to a
22 9,000 run. I simply don't know.

23 MS. CAHILL: What were the model assumptions? Did
24 you assume only five hundred acre-feet of groundwater?

25 MR. HUTCHINSON: Yes.

1 MS. CAHILL: And how much did you assume from Whale
2 Rock toward meeting the 10,000 acre-foot demand?

3 MR. HUTCHINSON: As Gary indicated, the model runs
4 by a coordinated operation of the two reservoirs. I
5 didn't look specifically at the output and the actual
6 take from Whale Rock isn't an input. Groundwater's an
7 input. You can tell it five hundred acre-feet per year
8 and it just takes it right off the top of the projected
9 demand.

10 Whale Rock, it's on the order of a thousand
11 acre-feet but it does fluctuate depending on the
12 conditions and the other things that the model has in it,
13 but I didn't go into the model in terms of what was
14 specifically going on at Whale Rock. I just relied on
15 the model because that's what the City has been using as
16 an operation and focused my attention on the input and
17 output from the Salinas side of it.

18 MS. CAHILL: Okay. And what size of diversions to
19 the City do you put into the model?

20 MR. HUTCHINSON: It's capped with the size of the
21 pipeline and with the -- and the water rights. It's in
22 my testimony what the --

23 MS. CAHILL: 8,050 acre-feet a year that's --

24 MR. HUTCHINSON: There is a cap on it and I want to
25 be accurate on the number because I don't recall it off

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1 the top of my head.

2 MS. CAHILL: Well, let me ask was the cap a cap
3 that is actually based on the physical limitation of the
4 pipeline or the limit of the water rights?

5 MR. HUTCHINSON: Both.

6 MS. CAHILL: Both. So --

7 MR. HUTCHINSON: It's either/or. Whichever one is
8 hit first, that will turn off the diversion.

9 MS. CAHILL: Okay. So if you show in your spread
10 sheet unmet demand in some years, it would be impossible
11 to operate the reservoir -- to operate Salinas Reservoir
12 to meet that increment of unmet demand?

13 MR. HUTCHINSON: If there's unmet demand, it's the
14 result of either there's not enough water in the
15 reservoir to divert or you've just not been able to
16 divert it either through the physical pipeline or the
17 water rights.

18 MS. CAHILL: Okay. So that the City of San Luis
19 Obispo doesn't have the option of operating the reservoir
20 differently in order to take more water in a given year
21 than the cap that you put into the spread sheet model; is
22 that correct?

23 MR. HUTCHINSON: I'm having trouble with the term
24 "operate the reservoir" because the way the model was set
25 up, there's a coordinated operation between Salinas and

1 Whale Rock, and one of the things you input into the
2 model is a total annual demand and then a -- basically a
3 split of that annual demand by month. So you have this
4 kind of curve that says, in essence, the highest demand's
5 going to be in the summer and the lowest demand's going
6 to be in the winter.

7 So I suppose if you really wanted to go in and
8 tinker with it, in particular years you could actually
9 adjust things to try and meet demand or make some
10 adjustments to your assumptions on when the demands occur
11 to get more water out of it depending on when the supply
12 and demand matches up; but, in essence, there's that hard
13 cap with the pipeline size and with the water right
14 diversion that typically will be met, you know, under
15 this 10,000 acre-foot demand center.

16 It's going to reach that limit in a lot of those
17 years -- in nearly all of them, and the times that those
18 demands are not met is usually when there's just simply
19 not enough water available or there's just a demand
20 deficit.

21 MS. CAHILL: Okay. Is it true that in
22 approximately half of the years there is no spill from
23 the existing Salinas Reservoir?

24 MR. HUTCHINSON: Based on the period of record
25 it's, yeah, roughly half.

1 MS. CAHILL: Okay. And so does that mean that in
2 half of the years the reservoir captures all the inflow
3 that arrives with the exception of the so-called live
4 stream releases which it captures and releases?

5 MR. HUTCHINSON: Pretty big exception, yeah. In
6 half of the years there is no spill, which means either
7 there is an increase in storage when a live stream exists
8 downstream of the dam, or the inflow is released; but
9 that condition also means that raising the dam is going
10 to have no impact whatsoever on the downstream
11 conditions, because there was no spill either way.

12 DR. GRAY: I might add, though, when you're talking
13 about it spilling every other year, that's based on the
14 last twenty years. If you look at the period of record
15 from 1945 to 1995, it only spills about a third of the
16 time.

17 MR. HUTCHINSON: Like I said, it depends on the
18 period of record that you're looking at.

19 MS. CAHILL: Right. What is the magnitude of the
20 live stream release, again, on average?

21 MR. HUTCHINSON: Based on Table 3.4-13 of the Final
22 EIR, from 1972 to 1995 the average live stream release
23 was 1,453.

24 MS. CAHILL: Okay. And if people wanted to
25 determine what percentage the live stream was of inflow,

1 those figures are given in that table; is that correct?

2 MR. HUTCHINSON: Yeah, you could calculate it by
3 taking the live stream release, adding it to the historic
4 spill, which then would give you a total downstream flow
5 and then divide the live stream release by the total
6 outflow.

7 MS. CAHILL: Okay. Actually, that isn't really
8 what I want to do.

9 What Board staff when they're preparing their draft
10 order might do is they can look at inflow from Table
11 3.4-1 and they can, in those same years, look at the size
12 of the live stream release to get a sense of what the
13 relative magnitude is; is that correct?

14 MR. HUTCHINSON: In Table 3.4-1 you have "Inflow,"
15 "Downstream Discharge" and "Pipeline Diversion To City"
16 so there's no -- downstream discharge is not -- in that
17 particular table we're not distinguishing between live
18 stream release and spill.

19 MS. CAHILL: Right.

20 MR. HUTCHINSON: They're added together.

21 MS. CAHILL: Right, but it gives us the inflow
22 number. So if we have the inflow number there and we
23 have the live stream amounts from Table 3.4-13, people
24 can get a rough sense --

25 MR. HUTCHINSON: Right. You can look at Table

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1 3.4-2, which has on a common time frame downstream
2 releases in the one, two, three, four, fifth column and
3 inflow in the last column, as well as spillway and
4 evaporation and precipitation and --

5 MS. CAHILL: I think what I just want to get is
6 that the live stream release is a relatively small
7 fraction of the inflow.

8 The average inflow is 20,524 acre-feet, correct?
9 We got that before from Table 3.4-1.

10 MR. HUTCHINSON: Based on that time frame, yes.

11 MS. CAHILL: Okay. And in the same time frame the
12 average live stream release from Table 3.4-13 is only
13 1,453.

14 MR. HUTCHINSON: Okay. First of all, Table 3.4-1
15 is a period of record that far exceeds the actual live
16 stream release. This takes you from 1942, a partial
17 year, all the way to 1996. So that gives you a
18 particular inflow number.

19 In Table 3.4-2 we have a column labeled "Downstream
20 Releases," but note that this record goes from 1970 to
21 1996, which actually is before live stream releases were
22 made under the Board order, but there were some releases
23 made.

24 In Table 3.4-13 we actually have a column --
25 because we're using 1972 to 1995, we wanted to look

1 specifically at the live stream releases in this table
2 and call them out as such.

3 MS. CAHILL: Okay. So --

4 MR. HUTCHINSON: So you're --

5 MS. CAHILL: I don't want to beat this horse
6 anymore. The live stream releases are shown on Table
7 3.4-13 and those are actual?

8 MR. HUTCHINSON: Those are what the data show as
9 live stream releases, that's correct.

10 MS. CAHILL: Okay, thank you.

11 MR. HUTCHINSON: When you look at other things that
12 show live stream releases pre-'72, specifically in
13 Appendix K, those are estimates of live stream releases
14 that had been developed by Leedshill-Herkenhoff some time
15 ago to kind of extend the record back as part of
16 developing the simulation plan.

17 MS. CAHILL: Okay. Let me just quickly go down
18 live stream. I think we all understand what we're
19 talking about, but this is not a live stream condition
20 that requires the release of water to maintain a live
21 stream, is it?

22 MR. HUTCHINSON: It's a misnomer in that sense. It
23 is a -- if a live stream does not exist, the City must
24 release and bypass the inflow -- not release but bypass
25 the inflow.

1 MS. CAHILL: Okay. So it doesn't even mean there
2 will be a live stream when live stream releases are being
3 made?

4 MR. HUTCHINSON: That's absolutely correct.

5 MS. CAHILL: And there may well be dry sections of
6 channel between the Salinas Dam and the Nacimiento River
7 at many times in many years?

8 MR. HUTCHINSON: That's correct.

9 MS. CAHILL: And the Live Stream Agreement doesn't
10 guarantee that any water will reach Paso Robles on the
11 surface?

12 MR. HUTCHINSON: Especially when Atascadero is
13 pumping, that's correct.

14 UNIDENTIFIED SPEAKER: I couldn't hear. Can you
15 say that again?

16 MR. HUTCHINSON: Especially when Atascadero is
17 pumping.

18 MS. CAHILL: Okay. On page five of your testimony,
19 lines twenty-two to twenty-three, you refer to a summer
20 where reservoir storage is depleted by diversions and
21 live stream releases.

22 MR. HUTCHINSON: Which page again, I'm sorry.

23 MS. CAHILL: Page five of your testimony, lines
24 twenty-two to twenty-three.

25 MR. HUTCHINSON: Okay.

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1 MS. CAHILL: And I was just wanting to explore --
2 you said reservoir storage is depleted by a live steam
3 release. I mean, shouldn't we really characterize the
4 live stream release as a bypass? It isn't really
5 depleting storage, is it?

6 MR. HUTCHINSON: You're correct, you're correct.

7 MS. CAHILL: Okay. What did you mean "depleted"?

8 MR. HUTCHINSON: Well, basically what happens is in
9 California typically you have a rainy season and supply
10 exceeds demand. So storage reservoirs increase, rise,
11 and in the summer demand exceeds supply and so storage
12 reservoirs are depleted and storage is drawn from to meet
13 those demands.

14 MS. CAHILL: Okay. But the live stream release is
15 considered really, in effect, a bypass?

16 MR. HUTCHINSON: Exactly.

17 MS. CAHILL: Which makes the greater contribution
18 to recharge of the Salinas River alluvium at Paso Robles,
19 spills or live stream releases?

20 MR. HUTCHINSON: Neither.

21 MS. CAHILL: Neither makes a greater contribution
22 than the other? Neither makes any contribution?

23 MR. HUTCHINSON: No, neither makes the single most
24 important contribution. There's a number of --

25 MS. CAHILL: Comparatively between the two of them,

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1 which of the two of those makes a greater contribution
2 than the other?

3 MR. HUTCHINSON: Spills.

4 MS. CAHILL: If the Salinas Reservoir Expansion
5 reduces spills from the reservoir but live stream
6 releases are not increased, will the result be a net
7 reduction in recharge to the Salinas River alluvium at
8 Paso Robles?

9 MR. HUTCHINSON: In some years there would be a
10 insignificant decrease. In other years there would be no
11 effect. You even pointed out -- like 1969 we saw that
12 there would be a calculated reduction in spill but there
13 would still be 200,000 acre-feet of water -- actually, go
14 to page -- or Table 3.4-15.

15 Now, we can see -- this doesn't go back to '69, but
16 let's look at 1978. Under the estimated -- under the
17 existing dam scenario, the 10,000 acre-foot demand, there
18 would be a flow of 213,000 acre-feet -- 213,543.

19 Under the raised dam --

20 MS. CAHILL: I'm sorry, which table?

21 MR. HUTCHINSON: This is Table 3.4-15.

22 MS. CAHILL: Okay. And which year?

23 MR. HUTCHINSON: 1978.

24 MS. CAHILL: Okay.

25 MR. HUTCHINSON: Existing dam 10,000 acre-foot per

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1 year demand scenario there would be an estimated flow at
2 Paso Robles of 213,543. Under the raised dam scenario,
3 10,000 acre-foot demand scenario, there would be 202,210
4 acre-feet of flow at Paso.

5 Now, I would suggest that when it's flowing that
6 high, the maximum recharge rate is being met whether it's
7 202,000 or 213,000. So in that particular year even
8 though we calculate a spill reduction, there would be
9 zero impact in terms of groundwater recharge.

10 MS. CAHILL: Okay. But 1978 appears to be the year
11 of second largest inflow in this entire period. So, I
12 mean, that was an extraordinarily wet year, wasn't it?

13 MR. HUTCHINSON: Well, if you go down the list, you
14 can see that there are numbers of years where it's -- '73
15 is over a hundred thousand. '74 is near a hundred
16 thousand. '78 is over 200,000. '80 is near 200,000.
17 '83 is 375, 376,000. '86 is over a hundred thousand.
18 And '93, even what we've identified as the most
19 significant effect, specifically dealing with a wet year
20 preceded by a number of dry years, we're still dealing
21 with over 177,000 acre-feet of flow at Paso Robles as
22 compared to under the no project condition of 195,000.

23 Now, if there's 177,000 acre-feet of water flowing
24 at Paso Robles, I would think that the -- based on what I
25 understand of the geometry of the size of that river and

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1 its recharge characteristics and just the sheer size of
2 it, you're going to hit maximum recharge rates in this
3 period.

4 So, therefore, I would suggest that even in 1993,
5 not the highest runoff year, but the most significant in
6 terms of a wet year preceded by a number of dry years,
7 you're still going to fill the basin up -- or at least --
8 not fill it up, at least have maximum recharge rates.

9 So in that context I would say that there is -- in
10 some years -- not in every year but in some years,
11 especially the most significant ones that we've
12 identified, you're going to have no effect on the amount
13 of recharge in the Paso Robles basin.

14 Now, under a worst case condition, if you take the
15 DWR estimate that the estimated recharge to the Paso
16 Robles groundwater basin is 11,000 acre-feet per year and
17 you take into account the average flow at Paso Robles is
18 70 -- say roughly 70 -- say 70,000 or 75,000, that works
19 out to about sixteen percent of the flow recharges the
20 basin.

21 So if you take the total impact of about 2,000
22 acre-feet in terms of spill reduction and you apply
23 that -- sixteen percent to that and say basically all the
24 water that the project holds back and doesn't spill, that
25 is one hundred percent taken in this magic pipe, passes

1 through Atascadero -- the canyon and Atascadero and winds
2 up in Paso Robles and apply that sixteen percent factor,
3 because the rest of it's just flowing on by, then you're
4 going to take sixteen percent of 2,000.

5 You're going to wind up with an average recharge
6 impact under worst case conditions -- this doesn't even
7 account for the very, very high flow years where there
8 would be no impact, but in the worst case you're going to
9 wind up with 330 acre-feet of recharge reduction.

10 MS. CAHILL: Oh, Mr. Hutchinson, I think we're
11 talking apples and oranges here. You're talking from the
12 DWR report, which was talking about the Paso Robles
13 Groundwater Basin, and my question to you had been the
14 Salinas River alluvium. In other words, the alluvium,
15 which is the underflow --

16 MR. HUTCHINSON: The underflow.

17 MS. CAHILL: -- in the bed of the river.

18 MR. HUTCHINSON: Okay.

19 MS. CAHILL: Now, that whole analysis you just went
20 through doesn't apply to the amount of additional water
21 in the river channel either on the surface or the
22 subsurface.

23 I mean, doesn't this table, in fact, show 1,968
24 average reduction of flow in the river at Paso Robles?

25 MR. HUTCHINSON: Surface flow, not underflow.

1 MS. CAHILL: Well, but there is a difference, is
2 there not, between the alluvium and the Paso Robles
3 groundwater basin?

4 MR. HUTCHINSON: Absolutely, but the alluvium isn't
5 an overdraft. The groundwater basin is, and the DWR
6 report identifies a component of water from the Salinas
7 River that does percolate into the deep portion of the
8 groundwater basin.

9 MS. CAHILL: Right, but the City of Paso Robles has
10 wells that take, in part, from that alluvium, don't they?

11 MR. HUTCHINSON: They have two kinds of wells.
12 They have shallow wells along the river that capture
13 underflow, and they have deeper wells in the main part of
14 the groundwater basin.

15 MS. CAHILL: Okay. But their wells in the river
16 will be affected to some extent by this 2,000 acre-foot
17 reduction or they could be?

18 MR. HUTCHINSON: Again, given the fact that there
19 are these periods of wet and dry, and to the extent that
20 typically wells have problems in dry periods and that
21 there would be no impact to spills in those dry periods
22 because there are no spills, there's still -- there is
23 going to be no impact, per se, as a result of the project
24 in drought years when usually wells have problems,
25 especially shallow wells and --

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1 MS. CAHILL: Your spread sheet --

2 MR. HUTCHINSON: -- in wet years there's going to
3 be opportunities to refill that very small alluvial
4 aquifer, very small in comparison to the larger
5 groundwater basin.

6 And so when you get into flow rates, I would say
7 over a hundred thousand, you're going to have pretty
8 close to maximum recharge rates, whether it's 100,000,
9 105,000, 200,000 or 300,000. You can only stuff so much
10 water so fast into these systems.

11 MS. CAHILL: Okay. Your spread sheet, though, and
12 the testimony you presented didn't really look at
13 recharge rates, did it? This is not included in your
14 written testimony?

15 MR. HUTCHINSON: Oh, sure it is. We looked at the
16 recharge -- the estimated recharge into the groundwater
17 basin of the Salinas -- of the Paso Robles groundwater
18 basin. There is no quote unquote "estimate" -- published
19 estimate of what the recharge is to the underflow but
20 it's a similar kind of system to the Atascadero area.

21 In fact, it's actually a little bit bigger in terms
22 of size and scope. And what we concluded at
23 Atascadero -- we dealt with recharge. We dealt with
24 recovering water levels and we saw that there was no
25 impact at Atascadero where we're not seeing these kind of

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1 flow numbers in the tens and hundreds of thousands.
2 We're dealing with much smaller flows, a much small
3 groundwater basin but, yet, it still fills up every
4 year -- or nearly every year except in extreme droughts.
5 It will fill up every year and then drain through pumping
6 every year. So it goes through this annual cycle, also.

7 MS. CAHILL: You're talking about Atascadero?

8 MR. HUTCHINSON: Atascadero, which is similar to
9 the river wells that the City of Paso Robles has, and
10 that is a distinction from the deeper wells. And we did
11 talk about groundwater recharge in the context of the
12 groundwater basin. We talked about water level changes
13 in Atascadero which have -- which are based on their
14 location and the basin that they're in -- the sub basin
15 that they're in are more sensitive to any kind of changes
16 in groundwater -- or in terms of Salinas River flow than
17 the City of Paso Robles' wells are.

18 MS. CAHILL: Okay. But you didn't do any specific
19 study as to the Paso Robles wells?

20 MR. HUTCHINSON: We did not look at their wells
21 specifically because the Atascadero wells were a specific
22 issue in the Draft EIR, and so we attempted to resolve
23 that issue through the revised Draft EIR.

24 Paso Robles made no specific comments about their
25 wells. There were general comments about the health of

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1 the groundwater basin as a whole, specifically in the
2 context of the overdraft, and so we focused on that.

3 To the extent that there are shallow wells in the
4 alluvium of the Salinas River in Paso Robles, they're
5 not -- they're in a better position than the Atascadero
6 wells and in the Atascadero wells there's no impact.

7 MS. CAHILL: Well, you say on page seven of your
8 testimony the flattening trend at higher flows suggests
9 that the recharge rates -- and I assume you mean at
10 Atascadero -- slow as that basin reaches capacity.

11 But when that happens, then doesn't more of the
12 water go on downstream?

13 MR. HUTCHINSON: That's right.

14 MS. CAHILL: So while there is less recharge at
15 Atascadero at higher flows, there may be more recharge
16 downstream?

17 MR. HUTCHINSON: There's not less recharge. It's
18 just that the basin's full so it's done recharging.

19 MS. CAHILL: The Final Environmental Impact
20 Report -- this is probably for you, Dr. Gray, or it may
21 not be -- for whoever it is -- lists as a significant
22 threshold for groundwater impacts, that the project would
23 measurably affect the amount of recharge in a groundwater
24 basin.

25 Does the expansion project create a measurable

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1 effect in the Atascadero sub basin?

2 MR. HUTCHINSON: In years where there are spill
3 reductions, the models and the analyses -- the worst case
4 analyses that we did did show a quote unquote "measurable
5 impact" with regard to the simulations models --

6 MS. CAHILL: Thank you.

7 MR. HUTCHINSON: -- that's correct.

8 MS. CAHILL: Thank you. Did the -- let me move on
9 to one other thing. Eric, would you put this one up and
10 I don't know which of the -- which of you is responsible
11 for the text in the hydrology section of the EIR --

12 MR. HUTCHINSON: Mostly me.

13 MS. CAHILL: Mostly you. Okay, so in the revised
14 Draft EIR on page 3.4-28 there is a statement that says,
15 in part, the only practical mitigation to reduce
16 downstream impacts during high flow years would be to
17 release a portion of the water from the reservoir instead
18 of allowing the reservoir to fill.

19 Did you write that?

20 MR. HUTCHINSON: This is in the draft?

21 MS. CAHILL: It's in the revised draft.

22 MR. HUTCHINSON: Is it in the final?

23 MS. CAHILL: I was actually going to ask you that.

24 MR. HUTCHINSON: You popped this up yesterday and I
25 spent a little bit of time last night going through --

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1 because I didn't get a quick -- I didn't get a look at
2 the page reference. So I went through basically all of
3 Section 324 looking for this in the final and I couldn't
4 find it.

5 MS. CAHILL: Exactly, exactly. It has disappeared.
6 This was a comment that -- well, let me start back.

7 Is -- assuming -- well, the next sentence says that
8 the mitigation would cause a reduction in the
9 effectiveness and viability of the project.

10 Setting aside the impacts on the project, is it
11 true that it is a practical mitigation to -- is it true
12 that it would -- could be done -- could you reduce
13 downstream impacts during high flow years by releasing a
14 portion of the water from the reservoir instead of
15 allowing it to fill?

16 MR. HUTCHINSON: If there were any significant
17 impacts, yes.

18 MS. CAHILL: Okay. And -- well, let me -- you've
19 qualified that. Let me go back and see. That wasn't as
20 clear an answer. Okay --

21 MR. HUTCHINSON: You're assuming that -- you're
22 sort of assuming that there are impacts to be mitigated.

23 MS. CAHILL: Right.

24 MR. HUTCHINSON: And what we're saying is there are
25 no mitigatable impacts so why have a mitigation?

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1 MS. CAHILL: Well, but some author --

2 H.O. BROWN: Wait, wait.

3 MR. HUTCHINSON: In theory, in theory, you're going
4 to wind up with an impact that's related to the reduced
5 spill. Well, the only practical way to mitigate that is
6 to release water to the point where it's not significant
7 anymore.

8 So what we're saying is that I don't know -- unless
9 I can see the context of -- because the page numbers are
10 obviously different between the draft and the final
11 because of the changes and additions and deletions,
12 without knowing the context of this, I can't tell you why
13 it's in there. All I can tell you is that I have a copy
14 of the final and it's not in there.

15 MS. CAHILL: Okay. So it is a mitigation measure
16 that was mentioned in the revised draft and is no longer
17 mentioned in the final; is that correct?

18 MR. HUTCHINSON: I don't know that. This may not
19 have been a proposed mitigation measure. This may have
20 been a general statement of if there's a problem -- it's
21 sort of like the -- what do you call it, the -- when you
22 talk about the significance tests in the EIR.

23 Do you have a copy of the draft?

24 MS. CAHILL: Are you familiar with once this came
25 out in the revised draft that there were a number of

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1 comment letters that said, "You are rejecting this
2 mitigation out of hand because of its impact on the
3 project and you really should consider it"?

4 Are you aware that there were comments on this very
5 mitigation measure?

6 MR. HUTCHINSON: Do you remember that?

7 MR. RAY: I think we can acknowledge that obviously
8 there's going to be reductions in downstream flows,
9 especially during the winter months of wet years.

10 In order to not have reductions in downstream
11 flows, basically you guys have to release water instead
12 of capture any water which would defeat the purposes of
13 the project, and that's what we were trying to state
14 here.

15 I think, also, this was alluding to the fact that
16 we've identified that there is -- to the extent that the
17 Paso Robles groundwater basin is in a state of overdraft
18 due to existing uses of that water basin, under CEQA you
19 could make a point that any contribution on the part of
20 this project or other downstream water users to that
21 overdraft situation could be considered a significant
22 cumulative impact.

23 That condition in the Paso Robles groundwater basin
24 will continue to occur irrespective of this project, and
25 the contribution of this project is minimal. To the

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1 extent that you wanted to try to mitigate the impact of
2 this project completely on that, you could make a point
3 that you'd have to release all the water that could be
4 captured in order to have no possible contribution to
5 that overdraft situation.

6 And I think that's the point we were trying to make
7 here, and it's that it's neither warranted nor feasible.

8 H.O. BROWN: How much more time do you have,
9 Ms. Cahill?

10 MS. CAHILL: Well, unfortunately, probably at least
11 ten more minutes and maybe fifteen.

12 H.O. BROWN: Would you like to break and come back
13 after lunch?

14 MS. CAHILL: I would, thank you, and maybe I can
15 reorganize it and be more efficient.

16 H.O. BROWN: Okay. We'll take a break for lunch
17 and meet back here at 1:00 o'clock

18 (Lunch recess taken.)

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AFTERNOON SESSION

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H.O. BROWN: Come to order, Ladies and Gentlemen.

Ms. Cahill, I have an announcement I'd like to make before you get started.

Mr. Maloney.

MR. MALONEY: Yes.

H.O. BROWN: You stated that you intended to raise an issue to the Board concerning the Notice of the Proceedings.

I will allow you to submit a legal brief to the Board concerning this issue. Your name will be added to the list of parties to exchange information. You shall receive and submit legal briefs according to the requirements that I will establish at the close of this hearing. I ask the parties to take note of Mr. Maloney's name and address and to include him in their services of legal briefs.

Mr. Maloney, would you come forward and state your name and address so the parties may record as such.

MR. MALONEY: Patrick Maloney, 2425 Webb Avenue, Alameda, California 94501. Telephone number is (510) 521-4575. Fax number is (510) 521-4623.

And I appreciate your position, your Honor.

H.O. BROWN: Certainly, Mr. Maloney.

1 MR. MALONEY: Does that mean I would have
2 cross-examination rights now as well? It's not
3 necessary.

4 H.O. BROWN: No, I hadn't planned on that.

5 MR. MALONEY: That's fine. I understand, thank
6 you.

7 H.O. BROWN: And, Mr. Maloney, it would be your
8 responsibility to make sure that the folks here have your
9 address and numbers. If somebody is missing, take note
10 and make sure that they get that information.

11 MR. MALONEY: The folks here have my address.

12 H.O. BROWN: Well, the ones that are not here today
13 right now.

14 MR. MALONEY: I thought you were talking about the
15 Board, thank you.

16 H.O. BROWN: The parties, I should say.

17 MR. MALONEY: Okay, thank you.

18 H.O. BROWN: Ms. Cahill, thank you for that
19 interruption and you may proceed.

20 MS. CAHILL: Thank you. I've completed my --

21 MR. SLATER: I'm sorry. I just wanted to ask a
22 procedural question for clarification.

23 Does that mean we should provide copies of
24 everything previously submitted to this Board to
25 Mr. Maloney, exhibits from each of the parties?

1 H.O. BROWN: Yes.

2 MR. SLATER: Okay, thank you.

3 MS. CAHILL: I have completed my examination of
4 Mr. Hutchinson, and Mr. Robinson has a few questions for
5 Dr. Gray. We expect no more than ten minutes.

6 H.O. BROWN: All right. Mr. Robinson.

7 MR. ROBINSON: Thank you.

8 Good afternoon, Dr. Gray. In reviewing your
9 testimony I've noticed that on page four you state that
10 the primary impact of the project on native vegetation
11 and sensitive plants will be the effects of periodic
12 inundation as a result of higher reservoir levels from
13 the raised dam.

14 Is that correct?

15 DR. GRAY: That's correct.

16 MR. ROBINSON: Could you please remind us of
17 exactly how many acres of land will be flooded or
18 inundated as a result of the project?

19 DR. GRAY: Sure. The project would have a higher
20 reservoir level that would encompass approximately four
21 hundred acres. Of that about two hundred is grassland,
22 about eighty-five is oak woodland, the rest is riparian
23 habitat.

24 The water level would not be at that higher level
25 at all times. It depends on what the inflow is and the

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1 water useage and the evaporation. So these lands would
2 not be inundated at all times. It would be a periodic
3 inundation

4 MR. ROBINSON: In effect, it would be a new bathtub
5 ring, wouldn't it?

6 DR. GRAY: I wouldn't characterize it in that
7 manner.

8 MR. ROBINSON: Can you tell us about how many oak
9 trees will actually be killed as a result of the
10 inundation?

11 DR. GRAY: I can tell you precisely. We counted
12 2700 within the new inundation zone. We feel that those
13 would be adversely affected and most of them probably
14 would die.

15 MR. ROBINSON: And could you tell how many pine
16 trees you expect to be adversely affected?

17 DR. GRAY: Four hundred sixty-nine pine trees.

18 MR. ROBINSON: Now, also on page four of your
19 testimony you state that the primary mitigation for those
20 impacts will be the replacement of the permanently
21 affected plant communities on private property in the
22 area surrounding the reservoir; is that correct?

23 DR. GRAY: That's correct.

24 MR. RAY: You go on to state that to ensure the
25 successful implementation of that mitigation you found

1 candidate sites where oak, riparian and stream
2 restoration would be feasible if there are willing
3 landowners; is that correct?

4 DR. GRAY: That's correct.

5 MR. ROBINSON: Can you please tell us what will
6 happen if you cannot or if the City cannot find willing
7 landowners?

8 DR. GRAY: In the Final EIR, Appendix D there's a
9 mitigation contingency. In the event willing landowners
10 are not identified and have not stepped forward, the City
11 has two options. One is they can exercise their power of
12 eminent domain or they could follow several contingency
13 mitigations listed in that appendix.

14 Those involve donating money to establish habitat
15 conservation programs in the region. I believe we listed
16 three of those in Appendix D. We also noted that if that
17 mitigation -- the proposed mitigation could not go
18 forward, the City would have to examine their
19 responsibilities under CEQA to determine if additional
20 analysis or public notice or environmental documents
21 would have to be prepared in the event the contingency
22 mitigation was pursued.

23 MR. ROBINSON: And in that event the project
24 couldn't go forward until that additional CEQA work was
25 completed?

1 DR. GRAY: That's correct.

2 MR. ROBINSON: I see. And you've talked about this
3 mitigation contingency which is part of the mitigation
4 approach in the Final EIR; is that correct?

5 DR. GRAY: That's correct.

6 MR. ROBINSON: That's where that's found in the
7 approach. And one of the contingencies, more
8 specifically, is that land -- money not spent on land
9 acquisition, either by willing sellers or by condemning
10 private property, would be contributed to habitat
11 conservation programs; is that correct?

12 DR. GRAY: That's correct.

13 MR. ROBINSON: And does the Final EIR that the
14 Board here is going to rely on identify the habitat
15 conservation programs to which that money would be
16 contributed?

17 DR. GRAY: We identified types of programs that
18 could be utilized, but realize that's a contingency. The
19 primary mitigation is being pursued aggressively and we
20 have no reason to believe that that's going to fail.

21 MR. ROBINSON: Right. But the Final EIR, does it
22 fail to address -- to identify existing operating habitat
23 conservation programs under this contingency approach?

24 DR. GRAY: It does not identify organizations or
25 agencies that could accomplish that type of mitigation

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1 because that's not the proposed mitigation. That's a
2 contingency that could be subject to further CEQA review.

3 MR. ROBINSON: I see. So, in effect, if you
4 can't -- if you don't -- if the City does not or cannot
5 acquire the replacement land, then the mitigation
6 contingency may kick in but there's no programs
7 identified to which money would be contributed and as a
8 matter of course, then, it seems to me that further CEQA
9 would be required; is that correct?

10 DR. GRAY: We stated that that's a possibility
11 because the City would have to demonstrate that this
12 contingency mitigation accomplished the same objective as
13 the primary mitigation.

14 MR. ROBINSON: I see. Now, on page five of your
15 testimony you state that the flooding of oak trees and
16 native plant communities would be a significant
17 unmitigable impact at least until replacement trees and
18 plant communities had attained sufficient size and
19 density to replace the flooded or inundated communities.

20 Is that correct?

21 DR. GRAY: I'll clarify. To replace the functions
22 of the habitats that would be affected, not necessarily
23 the exact same size of trees.

24 MR. ROBINSON: I see, the functions. Can you
25 please tell us -- well, one of the habitats that's going

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1 to be inundated would be oak woodlands; is that correct?

2 DR. GRAY: That's correct.

3 MR. ROBINSON: Can you tell us how long it takes to
4 grow like a mature oak tree?

5 DR. GRAY: Oh, it depends on the species; but it
6 can vary from twenty to thirty years for a very large
7 tree. In terms of functions, an oak tree that's ten
8 years old can provide habitat, shade, insect, shelter and
9 food and provide habitat for wildlife and invertebrates.

10 MR. ROBINSON: So in this case have you
11 specifically determined that young oak trees, brand new
12 plantings or ten years old, provide the same kind of
13 habitat that will be lost so that it's equivalent for the
14 species that use that oak woodland habitat?

15 DR. GRAY: It will when those oak trees mature.

16 MR. ROBINSON: And, again, in about how long will
17 that be?

18 DR. GRAY: I think you're talking about a minimum
19 of ten years.

20 MR. ROBINSON: Okay. And so until we get to ten
21 years we have an unmitigated significant impact, don't
22 we?

23 DR. GRAY: That's correct.

24 MR. ROBINSON: Now, on page six of your testimony
25 you state that the project would not affect downstream

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1 aquatic riparian vegetation in part because live stream
2 releases in the summer will maintain alluvial groundwater
3 to support riparian plants in the dry season.

4 Is that correct?

5 DR. GRAY: Because the project will not affect the
6 Live Stream Agreement, there would be no change in the
7 hydrologic regime for riparian plants below the dam.

8 MR. ROBINSON: Okay. Can you tell us is there --
9 do you know if there's always a live stream from the dam
10 to Paso Robles?

11 DR. GRAY: No, I cannot tell you that.

12 MR. ROBINSON: Okay. So can you say that there is
13 not a live stream from the dam to Paso Robles on some
14 occasions?

15 DR. GRAY: Would you repeat that question?

16 MR. ROBINSON: Can you tell us definitively that
17 there is, in fact, not a live stream from the dam to Paso
18 Robles sometimes?

19 DR. GRAY: There -- I don't believe that there's a
20 live stream at all times between the dam and Atascadero.

21 MR. ROBINSON: Okay. So the answer is "yes"?

22 DR. GRAY: I'd like you to rephrase that question.
23 I find it very awkward.

24 MR. ROBINSON: Okay. I guess as simply put as I
25 can try to make it, is there sometimes not a live stream

1 below the dam?

2 DR. GRAY: Is there sometimes in which there is not
3 a live stream below the dam to Atascadero?

4 MR. ROBINSON: To Paso Robles.

5 DR. GRAY: Yes, there are times when there is not a
6 continuous live stream.

7 MR. ROBINSON: Okay. And isn't it true that under
8 the live stream condition if there's no inflow to the
9 reservoir, then releases are not required by that
10 condition?

11 DR. GRAY: I'm going to defer that to the
12 hydrologist so that I don't misspeak how that condition
13 is implemented.

14 MR. HUTCHINSON: The Live Stream Agreement -- the
15 live stream condition requires release of all inflow when
16 there is not a live stream condition present.

17 Theoretically, if there's no inflow, therefore,
18 there's no release. Now, I'm not aware of a situation
19 where there is no inflow. I suppose in a deep, deep
20 drought there were some months when there was no inflow,
21 but I'm not aware of specifically how often that
22 occurred.

23 MR. ROBINSON: Right. So assuming the live stream
24 condition is operative because of the fact that there's
25 not a visible live stream between the dam and Paso Robles

1 gauge, for example, and if there was no inflow, there
2 would be no live stream release under the condition; is
3 that correct?

4 MR. HUTCHINSON: But I think there would be no flow
5 if the dam didn't exist if there was no inflow.

6 MR. ROBINSON: But the answer to my question would
7 be "yes"?

8 MR. HUTCHINSON: If there's no inflow, there's no
9 release.

10 MR. ROBINSON: Right.

11 MR. HUTCHINSON: There's nothing to bypass.

12 MR. ROBINSON: To the extent that you rely on the
13 live stream condition -- live stream releases to sustain
14 riparian vegetation in the river below the dam, when
15 there are no live stream releases, then the riparian
16 vegetation on the stream below the dam isn't benefiting
17 from any such releases? They logically cannot; is that
18 correct?

19 DR. GRAY: That's correct.

20 MR. ROBINSON: Okay. And isn't it true that if you
21 reduce the spill which infiltrates into the underflow,
22 that live stream releases during a dry season -- that the
23 absence of live stream releases during a dry flow would
24 harm riparian vegetation along the river?

25 DR. GRAY: Repeat that question, please.

1 MR. ROBINSON: Yeah. It's confusing, I'm sorry.

2 Let me try again.

3 Well, isn't it true that spills recharge the
4 underflow in the river?

5 DR. GRAY: I'll ask Mr. Hutchinson to answer that.

6 MR. HUTCHINSON: Spills recharge it. Tributary
7 inflow recharges. Live stream releases recharge at least
8 as -- you know, at least for Atascadero and -- as long as
9 there's water flowing in the river, there is an
10 opportunity for recharge.

11 MR. ROBINSON: So live streams do recharge the
12 groundwater in the alluvium of the river? The answer's
13 "yes"; is that correct?

14 MR. HUTCHINSON: As long as there is a live stream
15 release and it can get through the canyon in sufficient
16 amounts, there is the opportunity for that water -- that
17 water's either going to be consumed by vegetation, it's
18 going to evaporate, it's going to continue to flow past,
19 you know, any particular point or it's going to
20 infiltrate into the alluvium and become underflow and
21 possibly recharge the deeper groundwater basin.

22 One of those four things is going to happen to any
23 flow in the river whether it's from a spill, from a live
24 stream release or from an inflow from a tributary.

25 MR. ROBINSON: Isn't it true, though, that the

1 alluvial groundwater in the Salinas River is recharged,
2 in part, by spill?

3 MR. HUTCHINSON: Yes.

4 MR. ROBINSON: Okay. And to the extent that spill
5 is reduced, would that not harm riparian vegetation
6 dependent upon groundwater in the alluvium?

7 DR. GRAY: No, our conclusion is that the reduction
8 of spill would not have a significant impact on riparian
9 vegetation.

10 MR. ROBINSON: And isn't that, in part, because
11 you've determined that the reduction in spill impact is
12 small? It's seventeen percent.

13 DR. GRAY: The conclusion was based on the fact
14 that it's a small reduction, and I can elaborate on that.
15 It occurs in the winter when riparian plants are not
16 actively growing.

17 Just to put the size in perspective, the size of
18 the impact, if you look at a fifty-year period, that's
19 six hundred months. Under the current project there
20 would be forty-eight spills. Under the proposed project
21 there would be thirty-eight spills -- thirty-eight months
22 with spills.

23 That's ten months out of six hundred months in
24 which there would be a reduction in number of spills, and
25 over a 50-year period ten months of reduced spills in my

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1 mind is not a significant amount to affect the growth of
2 riparian vegetation.

3 MR. HUTCHINSON: A good way to look at it is the
4 way that -- I can't remember if it was Gary or John
5 described the operation of the Live Stream Agreement.
6 Think of the reservoir as an off-stream storage facility,
7 and whenever there's continuous flow from the upper end
8 of the Salinas River all the way down to the Nacimiento
9 River the City is permitted to move water into storage.
10 As soon as a portion of that river dries up, there can be
11 no more movement of water into storage and all the inflow
12 has to be bypassed.

13 Now, consider a spill. A spill means that there's
14 a lot of water in the system. The reservoir is filling.
15 The reservoir is already full. Water is spilling out of
16 the reservoir and essentially bypassing the reservoir.

17 Those are periods when there's a lot of water, a
18 lot of tributary inflow, the exact kind of condition when
19 storage would otherwise increase if there was available
20 storage. This occurs in the wintertime.

21 So you're not only dealing with biological reasons
22 why there wouldn't be any impact to riparian vegetation
23 with respect to the plants are dormant in the winter, you
24 also have other water in the river. The vegetation is
25 not one hundred percent reliant on the spill. It's

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1 partially dependent on the spill, partially dependent on
2 tributary inflow, partially dependent on live stream
3 release and partially dependent on just rainfall.

4 So there's lots of -- in those situations when
5 there's a spill, there's lots of water everywhere.

6 MR. ROBINSON: Lots of water everywhere, thank you.

7 I guess I have one final question. It's been
8 testified to today that the Final Environmental Impact
9 report was, in fact, certified; isn't that true?

10 DR. GRAY: That's correct.

11 MR. ROBINSON: Okay. I'd like to know if a
12 mitigation monitoring plan has been approved?

13 DR. GRAY: A mitigation monitoring plan has not
14 been prepared, and as you probably know it's not required
15 until project approval.

16 MR. ROBINSON: Thank you very much.

17 MS. CAHILL: Thank you.

18 H.O. BROWN: Thank you, Ms. Cahill, Mr. Robinson.

19 Staff, do you have some questions?

20 MS. MROWKA: Yes. I would like to ask

21 Mr. Hutchinson a series of questions.

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CROSS-EXAMINATION OF SAN LUIS OBISPO

BY STAFF

BY MS. MROWKA

MS. MROWKA: First off the bat, I would like to get a little clarification with respect to the reservoir operations from you. The issue I would like clarified is that this permit has both a direct diversion component and a storage component.

Is it your understanding that live stream condition is met also when the City is directly diverting water?

MR. HUTCHINSON: That is correct.

MS. MROWKA: And your modeling is based on that assumption?

MR. HUTCHINSON: Yes, it is.

MS. MROWKA: Was your model peer reviewed in any fashion?

MR. HUTCHINSON: I did not develop the model. This was a model that was provided to me by the City of San Luis Obispo. They routinely use it as part of their normal operations. It seems to work for them, and it seemed to be a good tool for what we were trying to do.

I did review it initially to make sure that it was appropriate and adequate for our purposes given the objectives and the scope of our project and our analysis.

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1 MS. MROWKA: And your conclusion from that review?

2 MR. HUTCHINSON: That it was suitable and something
3 that was actually a very good tool to use for this kind
4 of analysis.

5 MS. MROWKA: How comfortable are you with these
6 model results?

7 MR. HUTCHINSON: Very comfortable. Given the
8 objectives of what we were attempting to do, I'm very
9 comfortable with them.

10 MS. MROWKA: On a level of statistical
11 accuracy-type conclusion, the information that you're
12 portraying in the Environmental Impact Report, do you
13 think this is highly accurate information or would you
14 assume a lower level of accuracy to it?

15 MR. HUTCHINSON: We didn't get into a formal
16 analysis in that sense, which you often do with what I
17 would call calibrated models.

18 What we attempted to do with this entire program is
19 take a worst case assumptions conservative analysis so
20 that any kind of errors that -- of that nature that may
21 creep into the approach are basically satisfied or taken
22 care of by looking at a worst case condition.

23 MS. MROWKA: Could you portray for me other than
24 highly accurate what kind of confidence level you have in
25 the results that are contained in that environmental

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1 report?

2 MR. HUTCHINSON: I have high confidence in the
3 context of the objectives which involve comparing results
4 of runs between existing and raised dam scenarios and in
5 terms of the worst case assumptions where I'm carrying
6 any flow reductions completely downstream and carrying
7 them at each point of analysis.

8 MS. MROWKA: In the results that you report, you
9 report things like change in storage and diversions to
10 the City. Are all diversions, whether they be released
11 from storage or direct diversion, reported when you
12 report that diversion to the City quantity?

13 Do you just simply lump that value together as a
14 diversion to the City?

15 MR. HUTCHINSON: I would refer you to Appendix K of
16 the Final EIR and the big table that is at the beginning
17 of it where it has the monthly output from the two model
18 runs and point your attention to the fact that there's a
19 separate column for demand minus groundwater Whale Rock.
20 That was a summary that I just made out out of the output
21 to show how much of the demand was coming from the
22 Salinas Reservoir after Whale Rock and groundwater had
23 supplied their part of the demand.

24 Beginning of month storage, the inflow -- the
25 monthly inflow in acre-feet, the diversions, pipeline

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1 diversions in acre-feet, the downstream releases in
2 acre-feet, which is the live stream release, which is an
3 input to the model; the precipitation, which is a rate
4 multiplied by the surface area that's based on a look-up
5 table of the beginning of month storage and the
6 storage -- of the storage area capacity curve;
7 evaporation calculated the same way using a rate times
8 the storage rating curve, the spill, and then the
9 remaining demand or the deficit what can't be met.

10 So all those components are called out separately
11 in this -- in these output documents.

12 MS. MROWKA: Thank you. Setting aside modeling
13 methodology in your answer to this question, please.

14 MR. HUTCHINSON: Okay.

15 MS. MROWKA: Were there any input data errors that
16 were brought to your attention by commentators on the EIR
17 or somebody else prior to this hearing date? And, also,
18 were there any mathematical errors brought to your
19 attention?

20 MR. HUTCHINSON: There was an error that we found
21 internally. I believe it was an internal thing that Gary
22 Henderson found in some of the input data. In Appendix K
23 on page K-3 we identified -- or Gary -- yeah, it says
24 based on a review of records completed by Gary
25 Henderson -- three months, February, March and April of

1 '86 of spill data used to run the City's reservoir
2 operation spread sheet model were corrected.

3 This was something Gary found in the output of
4 the -- some of the preliminary work that we had done in
5 the revised Draft EIR. He noticed something didn't look
6 quite right with the spill numbers in that -- you know,
7 for that -- those three months and he made the
8 corrections and sent them off to me and I changed the
9 information, and the tables that I just referenced
10 reflect that corrected data.

11 It did make -- it made really no difference in any
12 of the outputs and it made absolutely no changes in any
13 of the conclusions that we drew, since we were only
14 dealing with three months out of six hundred or
15 something.

16 MS. MROWKA: So, then, to the best of your
17 knowledge, at this time, then, there are no data errors
18 nor are there mathematical errors in the results that you
19 are providing?

20 MR. HUTCHINSON: That's correct.

21 MS. MROWKA: Another question for you. You had
22 earlier testified that the most reduction in spill
23 quantity occurs when you have a wet year that was
24 preceded by one or more dry years.

25 When this occurs, does the Atascadero groundwater

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1 basin still fill in that wet year?

2 MR. HUTCHINSON: Yes, it does.

3 MS. MROWKA: And so did you find any changes in the
4 ability of that groundwater basin to recharge as a result
5 of the Reservoir Enlargement Project in that worst
6 case-type scenario?

7 MR. HUTCHINSON: Looking at the data -- are we
8 still on the don't worry about the model results anymore
9 or don't consider model results?

10 MS. MROWKA: I'm not asking you about the model
11 methodology at this time. I'm asking you as to results.

12 MR. HUTCHINSON: The data -- in reviewing the data
13 I got from Atascadero Mutual Water Company, I drew the
14 conclusion that there was going to be no impact just from
15 looking at where the water levels were.

16 The model assisted us in quantifying that. So
17 under both just a general analysis of the data and
18 through the model simulations, in both instances we
19 concluded that there would be no effect on Atascadero
20 Mutual Water Company's ability to pump wells.

21 MS. MROWKA: If the Reservoir Enlargement Project
22 were to proceed following this, would anything
23 accomplished under this project impair the City's ability
24 to meet the live stream condition?

25 MR. HUTCHINSON: No.

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1 MS. MROWKA: Thank you.

2 MR. HUTCHINSON: Thank you.

3 H.O. BROWN: Jim.

4 MR. SUTTON: Jim Sutton.

5 Mr. Hutchinson, I've got several clarifications on
6 clarifications. Bear with me.

7 In response to a question from Ms. Mrowka a minute
8 ago, you said that you thought it was your understanding
9 that the Live Stream Agreement applied both during
10 diversion to storage and during direct diversion.

11 In your direct testimony yesterday you stated that
12 the Live Stream Agreement applied only during diversion
13 to storage in the reservoir.

14 Can you tell me to the best of your knowledge now
15 which is, in fact, correct and which version of that you
16 used in your model?

17 MR. HUTCHINSON: Diversion to storage and diversion
18 to the City are independent events. They're going to
19 happen at the same time in certain circumstances, but
20 while the reservoir is filling the City is still going to
21 be diverting water. If during that situation there is a
22 dry period -- or a dry section of the river, there still
23 has to be a release of water. So in that case you're
24 going to wind up not being able to divert any water into
25 storage.

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1 Once you -- the thing you got to remember is that
2 there is a -- you know, a timing issue. There may be in
3 the data a particular month that shows a live stream
4 release and a diversion to the City, and in individual
5 days you may see a rise in storage near the beginning of
6 the month and then towards the end of the month you may
7 see live stream releases. And they're trying to match up
8 on, you know, a day-by-day or month-by-month basis
9 matching the inflow. So it's sort of when did they see
10 the dry spot in the river downstream, all right.

11 The order is silent as to how they do the
12 accounting, and the accounting is traditionally done on a
13 monthly basis but that doesn't negate or doesn't -- you
14 do see some of the records where you see some of these
15 things that look a little inconsistent in terms of
16 matching the inflow with the release.

17 MR. SUTTON: I understand that. But my question
18 is: You've offered two different versions here of how
19 the agreement -- the Live Stream Agreement actually works
20 and, in your opinion, regardless of how it works, it
21 doesn't affect the modeling; is that your conclusion?

22 MR. HUTCHINSON: The modeling used a live stream
23 release as an input. So given that -- given the fact
24 that there is a live stream release, the inflow has to
25 be -- that's matched up with the inflow. So in that case

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1 there is no increase in storage during those months.

2 There is either a holding of -- you know, a holding
3 -- well, actually, there would always be a decrease in
4 storage because there would always be some diversion to
5 the City, unless it rained a lot.

6 MR. SUTTON: Which brings me to my second question.
7 You stated again in response to that and essentially
8 rephrased it here that when you're diverting to storage
9 and the live stream condition ceases to exist, that --
10 you said that all diversions are stopped at that time?

11 MR. HUTCHINSON: All diversions to storage.

12 MR. SUTTON: All diversions to storage are stopped
13 at that time, that's correct.

14 MR. HUTCHINSON: Uh-huh.

15 MR. SUTTON: Operationally is that, in fact, what
16 happens or is an estimate made of how much water needs to
17 be released from the base of the dam in order to
18 reestablish the live stream condition?

19 MR. HUTCHINSON: From a practical day-to-day basis
20 I don't know. My understanding is they try and match it
21 up on a month-by-month basis because the calculations
22 lag, you know, real observations to a certain extent. So
23 there may not be -- if you go through the records and try
24 and see an inflow and downstream release match up on a
25 day-by-day basis, I don't think you'll see it.

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1 On a month-by-month basis we saw one example where
2 Mr. Baiocchi pulled out one of the sheets and wanted to
3 run down and look at certain releases and we noticed that
4 in that particular month the downstream releases were
5 actually greater than the inflow by a little bit.

6 So there's this -- I think -- my understanding is
7 the County attempts to balance it out but there's always
8 going to be, you know, slight errors because of the lag
9 in terms of the calculations and when things happen.

10 So the intent is to try and keep the thing matched
11 up as best as possible.

12 MR. SUTTON: But functionally that doesn't happen
13 on a day-to-day, hour-to-hour basis?

14 MR. HUTCHINSON: Not an an hour-to-hour basis, not
15 on a day-to-day basis and it's -- from what I remember
16 reading -- or reviewing in the records it looked very
17 close on a month-to-month basis.

18 But, again, that was not the focus of our analysis
19 to check compliance with the Live Stream Agreement. We
20 simply used that as an input. So we used the historic
21 data.

22 MR. SUTTON: A technical question that came up. On
23 your Table 3.4-1 --

24 MR. HUTCHINSON: Uh-huh.

25 MR. SUTTON: -- water year '57/'58 --

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1 MR. HUTCHINSON: Okay.

2 MR. SUTTON: -- it shows a inflow of over 57,000
3 acre-feet and a discharge of 2400 acre-feet and a
4 diversion to the City of about 2400 acre-feet.

5 Even assuming the reservoir is empty, what happened
6 to the other 30,000 acre-feet?

7 MR. HUTCHINSON: I'm assuming it spilled. We don't
8 have the record there.

9 MR. SUTTON: And I guess that brings me to my
10 second question. When you're talking about downstream
11 discharge in 3.4-1 --

12 MR. HUTCHINSON: Uh-huh.

13 MR. SUTTON: -- is that releases only or does that
14 include spills?

15 MR. HUTCHINSON: No, that includes spills -- oh.

16 MR. SUTTON: That's my point.

17 MR. HUTCHINSON: You're right. '68 and '69 you've
18 got a very big number.

19 MR. SUTTON: And a very big number?

20 MR. HUTCHINSON: Uh-huh. That's a good question.

21 MR. SUTTON: High evaporation, I guess.

22 Dr. Gray, one quick question for you. In response
23 to a question that was just put to you by the City of
24 Paso Robles, your response to the question, if I may
25 paraphrase it, was if live stream releases are not

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1 present the riparian vegetation is not benefiting from
2 it, and your response was "yes."

3 Do you recall that question?

4 DR. GRAY: Yes, I do.

5 MR. SUTTON: When the live stream condition does
6 not exist, however, there are still either bypasses --
7 there are still in most months bypasses from the dam; are
8 there not?

9 DR. GRAY: That's true.

10 MR. SUTTON: So there is -- at least for some
11 distance below the dam of an indeterminate length the
12 vegetation there would still be benefiting from releases
13 from the dam; is that correct?

14 DR. GRAY: That's correct, and there's also
15 tributary flow that is going to the river.

16 MR. SUTTON: I'm directing you especially here to
17 the question of the riparian vegetation vis-a-vis the
18 live stream condition.

19 And based on the comment from Mr. Hutchinson that
20 there are very few months when there is no inflow to the
21 dam, would it be safe to conclude that there is at least
22 minimal bypass flows of some nature from the base of the
23 dam in most months of most years?

24 DR. GRAY: I don't believe I'm qualified to answer
25 that. That's getting to the hydrologic data that I'm not

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1 as familiar with.

2 MR. SUTTON: Okay, thank you.

3 H.O. BROWN: Okay. Mr. Slater, do you have
4 redirect?

5 MR. SLATER: A limited amount.

6 ---oOo---

7 REDIRECT EXAMINATION OF SAN LUIS OBISPO

8 BY MR. SLATER

9 MR. SLATER: Mr. Hutchinson, if I can turn your
10 attention to the Paso Robles area. Can you tell us how
11 large the Paso Robles groundwater basin is?

12 MR. HUTCHINSON: The DWR 1979 report stated that
13 there's about -- a storage of about 26 million acre-feet
14 as of 1975. It also identified an overdraft rate of
15 30,000 acre-feet, which in more recent years has been as
16 high as 50,000 acre-feet per year.

17 Given the last twenty-five years, then maybe
18 there's about a million acre-feet less in storage. So
19 there's still about twenty-five million acre-feet in
20 storage based on those estimates.

21 MR. SLATER: And could you compare that to the
22 relative size of the San Luis groundwater basin?

23 MR. HUTCHINSON: It's my understanding the San Luis
24 groundwater basin has a storage of about 2500 acre-feet.

25 MR. SLATER: Now, I know you testified on -- to the

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1 questions on cross-examination about the danger in using
2 averages; but bear with me, if you will.

3 Have you done any analysis about what the average
4 annual flow is at Paso Robles on the Salinas River?

5 MR. HUTCHINSON: Yeah. On Table 3.4-14 -- oh, I'm
6 sorry, Paso Robles is 3.4-15 there is a historic flow
7 from 1972 to 1994 of 74,762 acre-feet. I think the
8 longer term record's a little bit different but for
9 purposes of the recent past --

10 MR. SLATER: Okay. Do you know what contributes to
11 that flow at Paso?

12 MR. HUTCHINSON: That flow at Paso comes from
13 releases from the dam, not only live stream but also
14 streams and also tributary inflow.

15 Based on the information in Table 3.4-13 about 1400
16 is from live stream, about 16,000 is from spill --
17 assuming it made it all the way down. So that is a --
18 that's about seventeen, eighteen thousand of seventy-four
19 comes from the dam, you know, in one form or another.

20 MR. SLATER: And have you in preparing the
21 Environmental Impact Report or preparing for your
22 testimony today reviewed any materials about recharge
23 rates from the Salinas River into the Paso Robles
24 groundwater basin?

25 MR. HUTCHINSON: Yes, the DWR report that I

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1 mentioned earlier estimates a total recharge into the
2 groundwater basin of 47,000 acre-feet per year. Eleven
3 thousand of that is from the Salinas River.

4 MR. SLATER: Okay. And on a percentage basis the
5 the water reaches the Paso Robles area on an annual
6 average basis. How much on a percentage basis of that
7 water on a per acre-foot basis actually percolates into
8 the basin?

9 MR. HUTCHINSON: If you take the 11,000 acre-feet
10 that DWR says recharges the groundwater basin and divide
11 that by the 74,762 of average flow, you wind up with 14.7
12 percent of the flow recharges the deep groundwater basin.

13 MR. SLATER: So if you were to look at -- please
14 bear with me and use -- consistent with using averages,
15 but if you were to take the impact of the proposed
16 project on an annual average basis over the period of
17 record that you examined, what would you expect the
18 reduction in recharge to be in the Paso Robles area as a
19 result of the project?

20 MR. HUTCHINSON: The project impact based on Table
21 3.4-15 is 1,968 acre-feet. So if you take 1968 and
22 multiply that by .147 as a worst case number, that
23 connotes that the spill that would have happened has the
24 same opportunity as just regular flow in any year over
25 the long term to infiltrate at the same rate. And that

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1 works out to 289 acre-feet per year of lost recharge
2 under a worst case assumption.

3 But as we've already talked about, a lot of that
4 impact occurs in really wet years when there would be
5 zero impact to recharge. But under the worst case, even
6 if you applied these percentages straight across, you're
7 still left with less than three hundred acre-feet of
8 recharge lost in the Paso Robles basin out of a total
9 recharge to the basin of 47,000 acre-feet.

10 MR. SLATER: And of the 74,000 that appears at Paso
11 Robles on a long-term average annual basis, what happens
12 to the water after it bypasses Paso Robles?

13 MR. HUTCHINSON: I can do -- once it passes that
14 gauge, it can infiltrate into the shallow alluvium,
15 become underflow -- you know, be available underflow
16 wise. There is a limited amount of riparian vegetation.
17 So it could be consumed by that. It could evaporate or
18 it could just keep on flowing as surface flow down
19 towards Bradley and points beyond.

20 MR. SLATER: Okay. Mr. Hutchinson, do you have any
21 knowledge of institutional methods to manage groundwater?

22 MR. HUTCHINSON: In California --

23 MS. CAHILL: Objection, this goes beyond the scope
24 of the cross-examination.

25 H.O. BROWN: Mr. Slater.

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1 MR. SLATER: I think that the issue of impacts on
2 the Paso Robles basin have been raised, and the question
3 is designed to elicit whether or not there are other ways
4 to manage those impacts.

5 H.O. BROWN: I'll allow the question.

6 MR. HUTCHINSON: In California there are four
7 primary methods to manage groundwater in an institutional
8 manner.

9 There can be special legislation to create a
10 special groundwater management district like the
11 Tri-Valley Groundwater Management District in Mono
12 County. There could be a county ordinance, which is
13 something that Tehema County and Inyo County have done.
14 There could be an adjudication of the groundwater basin,
15 and there can also be through consensus of all interested
16 parties development of what's known as an AB 3030 Plan to
17 manage groundwater.

18 MR. SLATER: And do you know if any of those are
19 being employed in San Luis Obispo County and, more
20 specifically, in the Paso Robles area?

21 MR. HUTCHINSON: Down in the Pomo/Santa Maria area
22 I know there's something related to groundwater
23 management. I think it's an adjudication, but I'm not
24 real familiar with the area, but I've heard some
25 rumblings about something going on down there.

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1 In Los Osos I'm involved with a project that
2 doesn't really fit into any one of the categories, but
3 there's a concerted effort by the three water purveyors
4 in the area to manage groundwater.

5 But in terms of Paso Robles, there's nothing that
6 I'm aware of.

7 MR. SLATER: Okay. In response to a question asked
8 by Mr. Baiocchi having to do with what he called the dead
9 pool or the minimum pool in the reservoir --

10 MR. HUTCHINSON: (Nodding of the head.)

11 MR. SLATER: -- what would be the impact of
12 increasing the minimum pool at the reservoir on yield to
13 the project -- the existing project?

14 MR. HUTCHINSON: If the dead pool were raised, that
15 would effectively reduce the amount of available storage
16 space and have an impact on the project.

17 MR. SLATER: Okay. In response to questions
18 concerning the potential evaporation losses, you provided
19 some estimates that evapo losses for the enlarged project
20 might be anywhere from 750 acre-feet to approximately
21 roughly 1500 acre-feet; is that correct?

22 MR. HUTCHINSON: That's right.

23 MR. SLATER: Have you -- do you have any opinion on
24 what kind of evaporation and carriage losses would be
25 associated with releasing water from the dam to get the

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1 water to Paso Robles?

2 MR. HUTCHINSON: Well, if you look at the records
3 and you look at what the live stream releases are in
4 1995, live stream release that year was 1929 acre-feet.
5 In Atascadero the historic flow column on Table 3.4-14 is
6 3,370, which is one of the lower numbers in the records;
7 and in Paso Robles, again, one of the lower numbers in
8 the record there in '85 is 8750.

9 So releasing 2,000 acre-feet under -- you know, '85
10 wasn't a real wet year. It wasn't a real dry year, but
11 it appears to me releasing 2,000 acre-feet probably
12 doesn't make it as far as Paso Robles.

13 MR. SLATER: And Ms. Cahill was questioning you
14 about your assumption of a 10,000 acre-foot demand number
15 as opposed to to the existing use of 9,000.

16 In your view, does the difference between 9,000 and
17 10,000 have a material impact on downstream releases?

18 MR. HUTCHINSON: No. I just went through the
19 little calculation regarding the loss of recharge
20 opportunity under the 10,000 acre-foot demand scenario
21 using the project impact of 1,968 and multiplying that by
22 the 14.7 percent.

23 Well, you could also take the -- instead of the
24 project impact, you could take the historic flow at Paso
25 Robles of 74,762 and subtract from that the estimated

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1 flow under the raised dam scenario, which then takes into
2 account not only the project but also the increased
3 demand.

4 So that would be then the 70,579, which means the
5 impact is now 4183 instead of 1968. Apply the 14.7
6 factor there and you get into a acre-foot -- or a
7 recharge reduction -- potential recharge reduction of
8 614 -- or 615 acre-feet per year.

9 So at the extreme ends you've got -- under the
10 10,000 acre-foot demand you've got a loss of a little
11 less than three hundred acre-feet per year. When you
12 consider the demand and the project, you've got about six
13 hundred acre-feet per year. The difference between those
14 numbers and the context of the groundwater basin are
15 insignificant.

16 MR. SLATER: Okay. And I only have --

17 MR. HUTCHINSON: So the 9,000 would be -- analysis
18 would be somewhere in the middle of those two.

19 MR. SLATER: I have one question for Mr. Ray and
20 that regards the minimum pool.

21 Do you have any knowledge about whether or not Fish
22 and Game has provided input into the maintenance of the
23 minimum pool?

24 MR. RAY: I know in the past that the Fish and Game
25 have indicated to the City, I believe, that they wanted

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1 MS. SCARPACE: Yes, page four.

2 The last paragraph states, briefly, that the Corps
3 of Engineers and downstream protestants and the State
4 engineer recognize that the operation of the original
5 Salinas Dam would impede on the rights of downstream --
6 prior downstream rights holders.

7 And in the paragraph preceding that it said that
8 the Corps' operation maintenance manual for the upper
9 Salinas River Dam, according to that manual, the
10 depletion rate of the underground reservoir between
11 Salinas Dam and the City of Paso Robles was estimated at
12 seventy acre-feet per day in 1959, although it could vary
13 from year to year. The Board estimates that the summer
14 water requirements of the users along that reach of the
15 river are about thirty cubic feet per second.

16 Is that summer water need requirement being
17 currently fulfilled by the live stream releases?

18 MR. HUTCHINSON: We did not look at live stream
19 releases in that context.

20 MS. SCARPACE: So you don't -- is it being met by
21 any releases, the summer need of thirty cubic feet per
22 second?

23 MR. HUTCHINSON: Well, thirty times -- thirty cfs
24 for the summer works out to about 5,430 acre-feet for a
25 three-month period.

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1 MS. SCARPACE: Is that being met under the present
2 operating condition?

3 MR. HUTCHINSON: And this is a reach between the
4 dam and the City of Paso Robles. Between the dam and the
5 City of Paso Robles is our wells that are owned by the
6 Atascadero Mutual Water Company. There are wells that
7 are owned by private property owners and agricultural
8 interests in the Atascadero area. There are wells in the
9 Templeton area, and depending on where you want to draw
10 the line the Paso Robles shallow wells are kind of at the
11 sound end of town.

12 So between all of those, they have been pumping
13 water and in -- except in extreme -- the only wells I'm
14 real familiar with are Atascadero wells. They have only
15 had to shut down early during the extreme drought years
16 and so through releases from the dam, spills, live stream
17 releases and tributary flow and rainfall, it appears that
18 those uses, whether it's this number or whatever they
19 use -- I mean, this is from 1959 but there -- except in
20 extreme droughts, there hasn't seemed to be any massive
21 problems with water supply along that reach.

22 MS. SCARPACE: Is it true that your hydrological
23 data is only -- refers to data collected up to 1995?

24 MR. HUTCHINSON: The analysis was completed with
25 data that ran through 1995, that's correct.

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1 MS. SCARPACE: Okay. Why hasn't it been updated to
2 bring it to current -- current values?

3 MR. HUTCHINSON: As in through 1999?

4 MS. SCARPACE: Right.

5 MR. HUTCHINSON: Well, the report was -- the
6 revised Draft EIR was released in 1997. The Final EIR
7 was released in 1998. So we obviously had to stop at
8 '97. So we're looking at '95 -- the report came out in
9 August, right?

10 MR. RAY: Yeah, the hydrologic data lags behind the
11 year. It does not become available in the year.

12 MR. HUTCHINSON: We don't have a day-to-day -- you
13 know, they collect it. There is a lag and then there is
14 the issue of -- we ran analyses from July to June, and so
15 to have a complete year we needed everything through
16 June, and the report was released in August of '97. So
17 we did not have the full, you know, following year. So
18 we cut it off in '95.

19 MR. RAY: We used the most complete data that was
20 available at the time we prepared the revised draft.

21 MR. HUTCHINSON: That's right.

22 MS. SCARPACE: Even though the final was -- came
23 out in 1998?

24 MR. RAY: The primary purpose of the Final EIR is
25 to address comments that are received on the Draft EIR.

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1 We don't update every single number in the revised draft.
2 You know, it could be a continuous process forever.
3 That's the standard procedure is to issue a draft,
4 receive comments, respond to the comments, issue the
5 final, and that's what we did.

6 MR. HUTCHINSON: And, in fact, '95, '96 and '97
7 were not remarkable years in the sense of things that we
8 had seen in the analysis.

9 In other words, it wasn't some very big wet year
10 that had been preceded by a number of dry years. There
11 was nothing special or nothing that would cause us to
12 rethink some of the conclusions that we had made because
13 those years were unremarkable in the context of the rest
14 of the effort.

15 MS. SCARPACE: Okay. With respect to the Paso
16 Robles groundwater basin and its aquifer, do you
17 recognize the fact that the aquifer isn't just one big
18 lake, that there are various layers of various water
19 qualities and depth in the aquifer?

20 MR. HUTCHINSON: Absolutely, yes.

21 MS. SCARPACE: And are you familiar with the study
22 that was entitled "Study of the Paso Robles Groundwater
23 Basin Final Report for the California Water Quality
24 Control Board" dated June 25th, 1993? That was CSPA's
25 Exhibit B.

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1 MR. HUTCHINSON: That's the one you referenced this
2 morning, yes.

3 MS. SCARPACE: Okay. And on page 5-1 of that
4 exhibit it states that the Paso Robles groundwater basin
5 is in overdraft, and it also states water quality may
6 deteriorate during overdraft conditions as users may be
7 forced to utilize lower quality deeper wells of the
8 basin. In the Paso Robles area these are known to be
9 both salty and sulfurous.

10 Does it also state that those lower areas are below
11 water quality standards for domestic use, or do you have
12 any information on that?

13 MR. HUTCHINSON: It doesn't say that. It just says
14 lower quality as a comparative statement. It doesn't
15 talk about water quality in terms of comparing it to
16 standards.

17 MS. SCARPACE: Also, when you speak about this
18 aquifer, isn't it true, then, that if you're forced to
19 use these deeper lower quality reaches of the aquifer
20 that it's not the same as just this -- as using good
21 water -- good quality water?

22 MR. HUTCHINSON: I'm not sure I understand the
23 question. You're saying that if you use deeper poorer
24 quality water it's not as good as shallow better quality
25 water?

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1 MS. SCARPACE: Well, as far as both domestic use
2 and agricultural use. Aren't there limitations as to its
3 usability once you get into poorer quality water?

4 You know, like plants are --

5 MR. HUTCHINSON: Water that has a lower quality has
6 limitations on its use, that's correct.

7 MS. SCARPACE: All right. So it may be higher in
8 total dissolved solids or something that makes it not
9 useful for either human consumption or plants and
10 livestock?

11 MR. HUTCHINSON: There's no primary health-related
12 standard on total dissolved solids. So that wouldn't be
13 a criteria on which to base a water use. There's other
14 constituents that would govern what it could and couldn't
15 be used for from a health standpoint.

16 MS. SCARPACE: What about the salty and sulfur
17 conditions that are referred to in this report?

18 MR. HUTCHINSON: It just says it's known to be
19 salty and sulfurous without giving any specifics as to
20 how salty, what the constituency is, what salts they are.

21 It gives no information on sulfur so I can't really
22 tell you if it's -- you know, precisely whether it would
23 be considered usable. It may not be considered as
24 desirable, but it still may be considered usable. I
25 don't know.

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1 MS. SCARPACE: And wouldn't continuous overdraft
2 result in land subsidence problems?

3 MR. HUTCHINSON: There are many documented cases
4 where overdraft conditions have caused subsidence
5 problems.

6 MS. SCARPACE: One further point is that the Final
7 EIR on page 3.4.1.2.1 -- it's kind of long. It might be
8 a section.

9 MR. HUTCHINSON: Read the section number again,
10 please.

11 MS. SCARPACE: 3.4.1.2.1.

12 MR. HUTCHINSON: Okay. It's on page 3.4-2.

13 MS. SCARPACE: Oh, okay -- states that the Salinas
14 River forms the western boundary of the Paso Robles
15 groundwater basin and contributes substantial quantities
16 of water to the aquifer.

17 Do you agree with that statement?

18 MR. HUTCHINSON: I don't see where it says that.

19 MR. SLATER: I'm sorry, do you have a page number?

20 MR. HUTCHINSON: All she had was the section. I
21 have to go through and --

22 H.O. BROWN: Did you give a page number on it?

23 MS. SCARPACE: Is it 3.2-1?

24 H.O. BROWN: Jim, do you have it?

25 MR. SUTTON: No, it's in the EIR.

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1 H.O. BROWN: Could you read the section out loud
2 for the rest of us.

3 MS. SCARPACE: The one I had was 3.4.1 --

4 MR. SLATER: Counsel, if I might.

5 MR. HUTCHINSON: The river forms the western
6 boundary of the Paso Robles groundwater basin for the
7 substantial quantities of water to the aquifer.

8 Yeah, that's based on the DWR report that shows the
9 location of the Salinas River on the western boundary of
10 the Paso Robles groundwater basin and it estimates that
11 11,000 acre-feet of the 47,000 acre-feet in total
12 recharge comes from the Salinas River. I would call that
13 substantial.

14 MS. SCARPACE: That's all the questions I have.

15 MR. BAIOCCHI: I have one additional question.

16 H.O. BROWN: All right, Mr. Baiocchi.

17 MR. BAIOCCHI: I'll make it as quick as I can.

18 There's confusion on my part concerning this thirty
19 second feet of water and you keep going to inflow. I've
20 heard you say that so many times.

21 Now, do you have a monitoring process and a
22 compliance process? Do you look? Do you have somebody
23 down on site that knows exactly there's three second feet
24 coming up from this stream, there's two here and one
25 there so you can add and subtract and make a release of

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1 water? Is that the way it's managed?

2 MR. SLATER: I'm going to object on the basis that
3 it exceeds the scope of redirect.

4 MR. BAIOCCHI: Well, she had brought up the thirty
5 second feet. I was just going a little further with it.

6 H.O. BROWN: Read the question again. I wrote down
7 the direct -- or redirect pretty good. What was the
8 question again?

9 MR. BAIOCCHI: Ms. Scarpace had indicated -- was
10 talking about a thirty-second foot release in the
11 summertime.

12 MS. SCARPACE: A need for release.

13 MR. BAIOCCHI: Oh, a need for release.

14 MS. SCARPACE: A need.

15 MR. BAIOCCHI: Okay. And I was trying to get to
16 the point where if that was met, how would they measure
17 for compliance and how would it be monitored?

18 H.O. BROWN: That was not on the redirect.

19 MR. BAIOCCHI: Okay. All right, thank you.

20 H.O. BROWN: Uh-huh.

21 Does that conclude the recross?

22 MS. SCARPACE: Yes, it does.

23 H.O. BROWN: Okay. Ms. Cahill.

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REXCROSS-EXAMINATION OF SAN LUIS OBISPO

BY PASO ROBLES

BY MS. CAHILL

MS. CAHILL: Mr. Hutchinson, in your responses to questions on redirect you referred again to the DWR study of 1979.

Have you heard criticisms that this study is, in fact, at this point outdated?

MR. HUTCHINSON: I have seen other more recent reports that update the overdraft estimates, but I've not heard anything to the extent that it is outdated to the point of not useful.

MS. CAHILL: And with regard to the questions regarding groundwater management, are you aware that the County of San Luis Obispo has commissioned and funded a study of the Paso Robles groundwater basin?

MR. HUTCHINSON: I have heard about that.

MS. CAHILL: Thank you.

H.O. BROWN: Staff?

Okay, exhibits.

MR. SLATER: Exhibits, at this point we would move that all the exhibits as attachments to the testimony of the two panels be moved into evidence and accepted and if -- and if there are any objections to hearsay or

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1 otherwise, we're prepared to lay a foundation and
2 respond.

3 H.O. BROWN: Do you need a listing of the exhibits,
4 Kathy, or do you have them?

5 MS. MROWKA: If I might check with counsel on this.

6 What I am showing for the City's exhibits is their
7 previously established admitted exhibit list for Exhibits
8 1 through 13(b) and additions to that list. Exhibit 14
9 was by reference to the State Water Board exhibit.
10 Exhibit 15 is another exhibit by a reference to the State
11 Water Board exhibit previously entered.

12 MR. SLATER: That's correct.

13 MS. MROWKA: Exhibit 16 was a November 22nd, 1994,
14 letter from Edward Anton to Scott Slater of Hatch and
15 Parent.

16 MR. SLATER: That's correct.

17 MS. MROWKA: And there was an addition of an
18 exhibit -- no, I'm sorry. That is the complete list I
19 have.

20 MR. SLATER: That's correct.

21 H.O. BROWN: Okay. Are there any objections to the
22 admission of these exhibits?

23 MR. SLATER: Just one clarification. The Final EIR
24 is assumed to be part of the reference, correct?

25 MS. MROWKA: Yes, because the State Water Board has

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1 previously entered our exhibits into the record.

2 MR. SLATER: All right, thank you.

3 H.O. BROWN: There being no objections, the
4 exhibits will be accepted.

5 MR. SLATER: Thank you.

6 H.O. BROWN: Thank you, Mr. Slater, and thank you.

7 MR. HUTCHINSON: Thank you.

8 H.O. BROWN: It's ten after 2:00, Ms. Scarpace,
9 Mr. Baiocchi -- we're missing Mr. Baiocchi. He just
10 stepped out. We're scheduled to break today at 4:00
11 o'clock. Would you like to start your direct now or
12 we'll have a break and then start the direct?

13 MS. SCARPACE: Well, I'd like to give my written
14 opening statement to the Board.

15 H.O. BROWN: Okay. You may proceed and you have
16 twenty minutes for that opening statement.

17 MS. MROWKA: Before you proceed, you just handed me
18 an opening statement. Is that going to be an exhibit and
19 if so please identify the exhibit number.

20 MS. SCARPACE: I don't know if that's your protocol
21 to make the opening statement an exhibit.

22 H.O. BROWN: Yes, we will.

23 MS. SCARPACE: Okay. Then I would -- if you could,
24 it would be exhibit -- well, unfortunately --

25 MS. CAHILL: Pardon me. Hearing Officer Brown, it

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1 seems to me that the opening statements are not
2 evidentiary. San Luis Obispo pre-filed theirs in the
3 form of a brief. We've prepared one that's similar. I
4 don't think you need to give it an exhibit number. I
5 mean, you certainly may if that's your choice but I
6 just --

7 MR. SLATER: The City concurs.

8 H.O. BROWN: Ms. Scarpace, we will not make it an
9 exhibit.

10 MS. SCARPACE: Okay, thank you.

11 This project in expanding the level of the Salinas
12 Dam constitutes an unreasonable use of water which is
13 prohibited by the California Constitution, Article 10,
14 Section 2. That section of the Constitution prohibits
15 the unreasonable use of water or method of diversion of
16 water that would result from increasing the level of the
17 spillway of the Salinas Dam.

18 The Water Board is required to control the
19 condition of water used consistent with public interest
20 to protect the environment and public trust resources,
21 including preservation of fish and wildlife.

22 When necessary, as in this case, the Water Board
23 must reallocate and reconsider rights previously granted
24 in order to protect fish and wildlife resources.

25 The Public Trust Doctrine precludes anyone or

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1 entity from acquiring vested rights to harm the public
2 trust. It imposes a continuing duty on the State to take
3 such action -- such uses into account in allocating water
4 resources. That law has been established by case --
5 California Supreme Court case law in this state and it
6 is -- it definitely applies to this particular case.

7 We'll be putting on evidence that will show that
8 increasing the level of the dam will infringe upon prior
9 vested riparian right uses both for domestic and farming
10 uses. These riparian uses were temporarily addressed by
11 the Live Stream Agreement, but as addressed in that 1972
12 order by the State Water Resources Control Board that was
13 never meant to be a permanent determination of the rights
14 of downstream users, and it had always been contemplated
15 that the exact amounts of those rights and needs would be
16 determined in the future.

17 Here it's been fifty-eight years since the dam was
18 first constructed and that determination still has been
19 put off, and the Board really needs to consider it before
20 allowing the expansion project.

21 It will be shown in the testimony that we'll
22 present that the prior vested rights are still not being
23 met. Their needs aren't being met. Also, the needs of
24 Fish and Wildlife have never been addressed by the Board
25 and this is -- these needs are mandated by Fish and Game

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1 Code Section 5937 and also the California Code of
2 Regulations 782, and we request that the Board address
3 these needs and impose conditions -- well, impose relief
4 and obligation for additional releases from the existing
5 dam to meet those needs.

6 So I'd like to start our direct testimony since
7 we're running short on time.

8 H.O. BROWN: Ms. Scarpace, you take your twenty
9 minutes if you need it.

10 MS. SCARPACE: Well, I just will trust that the
11 Board will read my opening statement. I'd like to call
12 some witnesses.

13 H.O. BROWN: All right.

14 MS. SCARPACE: I'm not really certain on the
15 Board's procedures about calling witnesses. Do you want
16 them one at a time?

17 H.O. BROWN: It can be your choice. You may call
18 them one at a time or bring them up as a panel. It may
19 be more convenient. And then when a witness cannot
20 answer the question fully, maybe the other one can help.

21 MS. SCARPACE: Okay.

22 H.O. BROWN: You're certainly welcome to do that.

23 MS. SCARPACE: Maybe I will do that.

24 H.O. BROWN: We are very flexible in our procedures
25 here. So whatever is comfortable to you and your

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1 witnesses, and as a reminder you have twenty minutes for
2 each witness. The cross-examination and the redirect, of
3 course, is vital.

4 MS. SCARPACE: All right.

5 H.O. BROWN: Off the record a moment.

6 (Off the record.)

7 H.O. BROWN: Ms. Scarpace, we'd like to take each
8 of these gentleman from left to right and have them to
9 give their name for the court reporter if you could do
10 that.

11 MR. CAGLIERO: My name is Pete Cagliero, and that's
12 spelled C-a-g-l-i-e-r-o.

13 MR. MORA: Thomas Arthur Mora, M-o-r-a.

14 MR. CHAULET: Leon G. Chaulet spelled
15 C-h-a-u-l-e-t.

16 MR. SCHMIDT: Otto E. R. Schmidt, S-c-h-m-i-d-t.

17 MR. FRANK: Franklin Frank.

18 ----oOo----

19 DIRECT TESTIMONY OF

20 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

21 BY MS. SCARPACE

22 MS. SCARPACE: Mr. Cagliero, are you a property
23 owner along the Salinas River?

24 MR. CAGLIERO: Yes, I am.

25 MS. CAHILL: Can you tell us where you own property

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1 and how much and how long have you and your predecessors
2 owned and operated this property?

3 MR. CAGLIERO: We own property along the Salinas
4 River, the Australia River and Vineyard Canyon Creek and
5 our property ownership goes back about to -- myself
6 personally to about 1956, my wife's family back into the
7 '40s. That land has been irrigated since the mission
8 days. So it has a history of irrigation from a long,
9 long time ago.

10 As a matter of fact, there's one parcel of land
11 that's landlocked amongst our land that belongs to the San
12 Miguel Mission. It's where they formed all the mission
13 adobe bricks and the mission tile to build the actual San
14 Miguel Mission.

15 MS. SCARPACE: Thank you. Did you receive notice
16 of the City of San Luis Obispo's application to enlarge
17 the dam?

18 MR. CAGLIERO: You mean the one they sent out in
19 1991?

20 MS. SCARPACE: In 1991.

21 MR. CAGLIERO: No, I did not.

22 MS. SCARPACE: Okay. What type of farming
23 operations do you conduct on your land?

24 MR. CAGLIERO: We are basically irrigated farmers.
25 Between the two ranches we irrigate about 1600 acres

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1 primarily in alfalfa hay, grain crops and vineyards.

2 MS. SCARPACE: Have you experienced dry years in
3 the past that have reduced the -- your well pumping
4 ability?

5 MR. CAGLIERO: Yes, we have. Several years we've
6 had dry years. The most significant ones were in the
7 early '70s. There was a long, dry period of time in that
8 time and we pumped from the Salinas underflow. And just
9 to make a designation, I refer to the west -- the Salinas
10 being the western edge of the Paso Robles groundwater
11 basin and the eastern edge.

12 We actually -- all our wells are on the western
13 edge of the -- the eastern side of the basin refers to as
14 far away as Shandon and the San Juan area and that which
15 is twenty-five, thirty miles from where we're at.

16 So we're basically along the western edge, and we
17 pump from the Salinas corridor there directly from the
18 underflow. Our wells are all a hundred foot deep or
19 less. Most of them less. Some of them are only fifty
20 feet deep, and we really experience changes in pumping
21 conditions in dry seasons and especially if we've had two
22 dry seasons in a row and a third season, as in the '70s.
23 Our wells just virtually dried up.

24 I mean, our pumps -- we just sucked so much air
25 that we had to shut them down and we had to make a

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1 decision then to either stay with the shallow pumping
2 situation that we had and just go without water for part
3 of the season, which we did, and we were in the alfalfa
4 business totally at that particular time and we just shut
5 down the operation, because our other choice was to drill
6 through the clay.

7 And the clay layer on our ranch is about 285 feet
8 thick, and if you drill through that clay layer for the
9 deeper basin water, it's not as good in that area. We
10 don't get as much water as we need, plus the fact that we
11 have to shut off all the top water because falling water
12 creates so much air in the well that you can't use it.
13 So you have to shut it all off. So it makes your pumping
14 expensive versus reasonable compared to the shallow
15 stuff. So we elected not to do that. So we strictly
16 pumped from the underflow, and the expansion of this dam
17 and the recharge of the river is just critically
18 important to us.

19 And, you know, I'm here speaking more for my -- I
20 know the cities have rights and San Luis has rights, Paso
21 Robles has rights, but I'm concerned about my riparian
22 rights. We've been there for a long time. This land has
23 been under irrigation way back before I got there, and we
24 have riparian rights that are ahead of all the
25 prescriptive rights of the cities. So that's my concern

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1 is riparian rights.

2 MS. SCARPACE: Okay. Do you have any vineyards in
3 place that would be adversely affected if your
4 groundwater tables should drop as a result of increasing
5 the Salinas Dam level?

6 MR. CAGLIERO: Yes, we do. We have -- at this
7 point in time we're in the process of -- our vineyard
8 acre is 265 acres and if we had a dry year under these
9 conditions, it would be a disaster to us.

10 The investment in a vineyard, not counting the cost
11 of the land to bring it up to production in three years
12 is about \$10,000 per acre, and we haven't got the option
13 of shutting off the wells on a vineyard investment, not
14 without it being a total disaster, because the vines
15 would not survive that, nor would the crop.

16 H.O. BROWN: Does the 400-foot aquifer go up that
17 far?

18 MR. CAGLIERO: The what?

19 H.O. BROWN: Four hundred-foot aquifer.

20 MR. CAGLIERO: What do you mean by the "400-foot
21 aquifer," Mr. Brown?

22 H.O. BROWN: Well, in the Salinas Valley area
23 there's an aquifer that's usually described as the
24 shallow aquifer and the 400-foot aquifer and then the
25 deep aquifer. So I just wondered if --

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1 MR. CAGLIERO: All our wells in the Salinas are in
2 the shallow aquifer. The wells on the Australia side of
3 our ranch are in the -- what I guess we could call the
4 400-foot aquifer because we have wells that are in the
5 four- to five-hundred range on that side of the ranch.
6 They don't irrigate the front side where -- our new
7 vineyard installation is all off on the west side.

8 H.O. BROWN: Thank you.

9 MS. SCARPACE: Are there other vineyards --

10 H.O. BROWN: Mr. Maloney.

11 MR. MALONEY: I was stretching. I realize I
12 couldn't say it, but the 400-foot aquifer is only in the
13 northern end of the Salinas Valley. It's not down there
14 at all. It's up around Chualar at the maximum.

15 H.O. BROWN: Okay. That is not testimony,
16 unfortunately.

17 MR. CAGLIERO: Okay, I really don't understand --
18 I've never heard the term "400-foot aquifer" on the
19 Salinas River but -- so excuse my ignorance.

20 MS. SCARPACE: Are there other vineyards located
21 along the Salinas River between your property and down to
22 Atascadero or Santa Margarita?

23 MR. CAGLIERO: Yes, there's vineyards south of us
24 and north of us both that use water from this aquifer.

25 MS. SCARPACE: So there are other farmers in your

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1 same situation would you say?

2 MR. CAGLIERO: Definitely. I represent here myself
3 and, also, I'd like to speak for -- Mr. Mora, also.
4 We're both on the North County Water Forum Board and
5 we're speaking for -- been appointed by our supervisor
6 and we represent agriculture for our area.

7 And so I'm really speaking on behalf of myself and
8 my fellow people that work in agriculture that pump water
9 from the Salinas underflow and also from the Paso Robles
10 water basin.

11 MS. SCARPACE: Okay. Are you -- is the present
12 Live Stream Agreement adequate to supply your water
13 needs?

14 MR. CAGLIERO: I'd have to say, no, it's not. You
15 know, it really bothers me when the hydrologists give so
16 many opinions with four hundred hours of experience.
17 They're looking at our water system, and I have
18 forty-three years experience and I think Tom has as many
19 or more. You know, he's such an expert on our water and
20 says it has no impact on us and I don't agree with that
21 at all. The live stream concept is a measure that is
22 certainly a help. I have no problem with that part of
23 it, but it's not adequate to get our water.

24 What we really need to have -- if San Luis wants to
25 expand this dam, what they really need to put in our are

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1 are monitoring wells that protect our riparian rights.
2 There's been nothing in the EIR anywhere protecting our
3 riparian rights. We were there first. We have first
4 right to that water. The water was ours first, not
5 theirs.

6 And they look at it it's their water, "It's out of
7 our watershed" and, you know, if we get some, great. If
8 we don't, well, that's too bad. I think they ought to
9 install monitoring wells on the underflow of the Salinas
10 River and they ought to use those as gauges, not the live
11 stream concept and not what they let out. Put actual
12 monitoring wells on our riparian water to see how they
13 are affecting us. You know, that answer to that is,
14 well, they're not affecting us so they don't need to do
15 anything.

16 MS. SCARPACE: Do you have any concerns about how a
17 potential dam failure during an earthquake might affect
18 your property?

19 MR. CAGLIERO: Yes, I have some real great concerns
20 over that. You know, we naturally irrigate along the low
21 lying land there and if we had a dam failure or even in
22 the year of 1969 where there was, you know, a great flow
23 of water over the spillway and then when things really
24 got exciting they opened up the flood gates on top of
25 that worrying about safety of the dam and the downstream

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1 people and just that extra water did a tremendous amount
2 of damage. We lost fourteen acres in one spot along the
3 river and about twenty in another.

4 We have eighteen wells and booster systems and
5 things of that nature in place along the river and if
6 these would all be unindated, the wells would be
7 contaminated, you know, it would ruin the systems. It
8 would flood all the electric motors. It would cause us
9 just an immense amount of damage. I don't know what the
10 dollar amount would be but it would be tremendous, along
11 with lots of residents that live along the low lying
12 area, too, besides ourselves.

13 MS. SCARPACE: Have you had to -- is your water
14 table dropping, have you noticed over the years, or does
15 it just vary from year to year?

16 MR. CAGLIERO: Our water table fluctuates. You
17 know, we've had years like in the '70s where it was
18 definitely dropping and over the dry years. And we've
19 had other periods of dry years where it's dropped, and
20 we've had years where it comes back.

21 You know, in the -- when we get the wet years, the
22 good years, the basin recharges. The underflow
23 definitely recharges. The river scours. You know,
24 there's a lot of things that goes along with the overflow
25 of the river or the water coming down on the high years

1 that's a benefit to us.

2 The live stream does nothing for your scouring of
3 the river. It doesn't cleanse any aquifers. You know,
4 if anything, over the years we've lost more water quality
5 than quantity. I think the more effluents that are
6 dumped in the river by the cities, especially through the
7 use of water softeners in the City, you know, it puts a
8 certain amount of salt into the surf system. They clean
9 it the best they can. It's great water that comes out,
10 but that has an affect on us.

11 And the only thing that really helps that quality
12 are wet years and the scouring of that river and a real
13 purging of our system. And so -- you know, our system
14 goes up and it goes down but I can't say -- you know, I
15 don't agree with the '79 study of the basin overdraft
16 completely because we would be out of water if that
17 report was correct.

18 That's why we're working hard on our County Water
19 Forum to get a new water study done that is more accurate
20 than the last one. The last one, I think, had a lot of
21 things go into it that was good but lots of them that
22 were not good. And the results are not accurate because
23 if that study was correct, we'd be out of water several
24 years ago and we're not.

25 MS. SCARPACE: So is it fair to say that your

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1 farming operations depend upon the recharge of the
2 groundwater directly from the Salinas River?

3 MS. CAHILL: In my operations it certainly has a
4 great affect, yes. I'd say eighty percent of our water
5 comes from the Salinas underflow, and for that percentage
6 of our water it would have a much greater effect. The
7 deeper wells on the backside of the ranch, the Australia
8 side, it wouldn't have as great an effect, but it also
9 has an effect.

10 MS. SCARPACE: Okay, thank you.

11 Mr. Mora, I'd like to ask you some questions.

12 H.O. BROWN: Ms. Scarpace, we're going to take a
13 10-minute break at this time, if it's convenient.

14 MS. SCARPACE: Okay.

15 H.O. BROWN: So we'll take a 10-minute break and be
16 back here at about seventeen, eighteen 'til.

17 (Whereupon a recess was taken.)

18 H.O. BROWN: If we could reconvene, please.

19 We did notice that today's hearing session will end
20 at 4:00 PM today and that's what we'll stick with today.
21 We will hold a third day hearing next Monday. What is
22 that, the 18th?

23 UNIDENTIFIED SPEAKER: Start time?

24 H.O. BROWN: Next Monday, the 18th. Start time
25 will be 9:00 o'clock in the morning and we'll proceed to

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1 at least 5:00 o'clock, maybe later if needed.

2 Ms. Scarpace, you're up.

3 MS. CAHILL: Pardon me, Mr. Brown. Pardon me. I
4 have just remembered an appointment I have on Monday
5 morning with a cardiologist that I've set a long time ago
6 and don't want to move. If it would be all right, you
7 could go ahead as you planned at 9:00 o'clock but I would
8 ask your indulgence that if you got to our case before I
9 could make it back, you might have to take a recess until
10 I arrive to put on our witnesses.

11 H.O. BROWN: We'll work around that, Ms. Cahill.

12 MS. CAHILL: Thank you.

13 H.O. BROWN: Thank you for the notice, and remind
14 the staff if necessary we will accommodate that
15 appointment with Ms. Cahill.

16 Any other accommodations that may have to be made?

17 All right. Ms. Scarpace, would you please proceed.

18 MS. SCARPACE: Okay. I have one more question,
19 Mr. Cagliero.

20 H.O. BROWN: Pull the mike up closer, please.

21 MS. SCARPACE: Have you had any experience in the
22 past around 1989 with a threat to have the Live Stream
23 Agreement terminated or adversely modified?

24 MR. CAGLIERO: Yes, I filed a protest, as a matter
25 of fact, on May 22nd, 1989. I've got it here in front of

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1 me. I believe Mayor Settle was mayor at that time, and
2 it was a dry year and they wanted to turn off the live
3 stream to the North County, and so I filed a protest. So
4 did the City of Paso Robles and many others.

5 And one of the things in my protest, they asked
6 under what conditions is it a protest to be disregarded
7 or dismissed. And I put (reading): They're to
8 substitute a water supply at no additional cost to me,
9 replace my riparian irrigation if any wells go dry,
10 provision for direct compensation for any resultant pump
11 and well damage and crop losses, and the agreement from
12 the applicant to use best efforts to find new sources of
13 municipal water to avoid the necessary using of any
14 potentially -- or potentially impairing my riparian water
15 source in the future.

16 And then after all the protests they backed off and
17 did not do that; but, yes, I did.

18 MS. SCARPACE: Did you submit a written statement
19 to the Board with your written testimony?

20 MR. CAGLIERO: Well, this is to the State Water
21 Resources Board here.

22 MS. SCARPACE: I mean for today's testimony here?

23 MR. CAGLIERO: No, I did not.

24 MS. SCARPACE: I think you did.

25 MR. CAGLIERO: Well, I wrote a letter to the Board,

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1 yes. I didn't write my -- I made an opening statement,
2 but I didn't make a prepared document. I'm not an
3 attorney or any of those things. I'm just a farmer so --

4 MS. SCARPACE: We submitted it to the Board. Was
5 that written letter true and correct, to your knowledge?

6 MR. CAGLIERO: Absolutely, yes, it was.

7 MS. SCARPACE: Thank you.

8 Mr. Mora, I have some questions. Do you have land
9 along the Salinas River and some of its tributaries?

10 MR. MORA: Yes, I do. I own farms. My family's
11 owned these farms on the Salinas River since about 1948.

12 MS. SCARPACE: Okay. Did your predecessors in
13 interest irrigate along that?

14 MR. MORA: Yes. Our farms -- one of them started
15 pumping water on the Salinas River in 1927. We still
16 have the Fairbanks Morris Pumping Plant in place. The
17 year started is written in concrete. We were one of the
18 first farms at that time. Of course, we had known it,
19 but it was a dairy farm operation with centrifugal pumps
20 and they pumped water from a level of about twelve feet
21 and they started pumping back in 1927.

22 MS. SCARPACE: And about how many acres do you
23 farm?

24 MR. MORA: We farm in a couple of counties in
25 different locations, but in that area we're probably

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1 farming three hundred acres of which a hundred acres is
2 irrigated at all times.

3 MS. SCARPACE: And were you given notice of the
4 proposed enlargement of the Salinas Dam in 1991?

5 MR. MORA: I did not receive a statement from the
6 City. The way that I got the information was from
7 neighbors who were concerned, people that wanted to know
8 what was going on. I looked at the list. My name was
9 not on it, but some of my fellow neighbors and farmers
10 were on that list.

11 MS. SCARPACE: Okay. So you were unable to file a
12 protest because --

13 MR. MORA: That's correct. I learned about it
14 after the protest period had ended.

15 MS. SCARPACE: Also, did you submit a statement or
16 letter to the Board?

17 MR. MORA: Yes, I did. I faxed out a statement to
18 the California State Water Resources Control Board
19 hearing and I sent a copy that very night to you, also.

20 MS. SCARPACE: And was that statement true and
21 correct?

22 MR. MORA: Yes, it is.

23 MS. SCARPACE: What has been your -- you and your
24 family's experience as to water levels along the Salinas
25 and effects on your wells?

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1 MR. MORA: We've operated those farms since 1948.
2 I purchased some of the farms -- or one of the farms in
3 1971. Two years after the wettest year on record we were
4 drilling wells to deepen our water table -- or get down
5 to a lower water table. We pump from the -- what we call
6 the Salinas underflow and most of my wells are between
7 fifty to a hundred feet deep. Prior to that time that
8 water was about thirty feet deep.

9 The changes in the dam operation after 1969 --
10 which, incidentally, did a lot of damage to our farms.
11 We're still having problems with that situation. That
12 dam is not operated like dams that I'm used to. I spent
13 twenty-two years in the San Joaquin Valley, Friant, Kern,
14 Delta-Mendota. I know a little bit about the Central
15 Valley Project. I have ranches for sixteen years in
16 Ventura County where we pull water out of different
17 areas, and this Salinas Dam has not operated like other
18 dams.

19 For a while we didn't get any water down the river.
20 We had to drill our wells, redrill our wells, go deeper.
21 We'd go down -- like Pete says, we'd go to about a
22 hundred feet. My farm is located in the Atascadero
23 Mutual Water Company's well fields. They got access to
24 that in 1914, in that area, when E.G. Lewis set up a
25 colony and brought all these people out and created the

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1 fruit companies and the subdivisions.

2 So these wells are drilled during the '70s,
3 punch-in holes between a hundred to six hundred fifty
4 feet deep. I think the wells on my farm are eight, nine
5 and eleven. They're powered by huge caterpillar engines
6 running off a natural gas mainline, and these pumps have
7 the capacity to pump between one to two million gallons
8 of water per day at the back of my farm. So, yeah, I'd
9 say I'm affected a great deal by the underflow and water
10 flow of the river.

11 MS. SCARPACE: Have your wells experienced water
12 shortages during drought years?

13 MR. MORA: Yes, and I can only speak -- my family's
14 been there since the missions, and the missions are the
15 ones that started this irrigation deal. But I ran into
16 difficulties in 1976/'77. I ran into difficulties in
17 1987 through 19 -- March of 1991 when in those two
18 periods a lot of our wells went dry -- I mean, our
19 domestic wells went dry. We had to move the cattle to
20 different locations. That's affected a lot by this Live
21 Stream Agreement, but we'll get to that.

22 MS. SCARPACE: What has been your experience with
23 the Live Stream Agreement? Does it satisfy your needs
24 or --

25 MR. MORA: It's a highly manipulated agreement that

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1 is open to a lot of discussion by growers like myself
2 because of the location of where the Live Stream
3 Agreement is defunct. And that happens to be between the
4 Atascadero well field, which is at the back of my
5 property which is about, let's say, a half mile east and
6 north of the City of Atascadero -- or within their water
7 department.

8 The problem lies from there up to the confluence of
9 two tributaries we call Graves Creek and Paso Robles
10 Creek, and Paso Robles Creek is actually Jack and San
11 Lauretin Creeks combined. And, actually, the Jack Creek
12 originates on another one of our ranches clear up on the
13 coast range at Cypress Mountain, which is a primary feed
14 into the Nacimiento. So we've got a primary idea --
15 we've owned that ranch since 1976 -- you know, where our
16 water comes from. In fact, we lease a ranch there in that
17 confluence just to protect ourselves.

18 As we go from the well field towards the confluence
19 of these two tributaries, we have a natural rock dam in
20 the Salinas River. What that dam does is during periods
21 of spill or overflow, that water is pushed down into the
22 lower aquifer, what we call the Paso Robles ground basin.

23 Now, we go along at a hundred feet and all of a
24 sudden the water hits this rock flow and disappears. And
25 so here we are up at the dam turning on these two little

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1 valves we got that shoot water from here to that wall
2 over there and they're trying to get water through that
3 corridor, which basically we operate in the Salinas
4 corridor, down to make a live stream because that Paso
5 Robles Creek will kick out so much water. It runs clear
6 past Pete's place clear up at the north end of San Luis
7 Obispo County into Monterey County. I mean, there's a
8 lot of water that comes out of there.

9 So we don't have a continuous flow. For us guys in
10 that region, me and about a half dozen of my neighbors,
11 that water hits that rock dam in the aquifer and takes
12 that water -- instead of going fifty feet deep or sixty
13 feet deep it probably goes around six hundred feet deep
14 into the lower aquifer.

15 In fact -- you know, they're not here, Atascadero
16 Mutual Water Company, but I know these guys. In fact, I
17 was there during the drought before they had their
18 current manager, and at one point they were going to put
19 water back into the river and they found out that
20 because of the rock dams there, that if they put water to
21 recharge their own wells they'd probably lose it to the
22 lower aquifer.

23 So what has happened in the past in my experience
24 with the Live Stream Agreement, or however you want to
25 call it, condition, neighbors will have to call the

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1 County and say, "Hey, we don't have any water at John
2 Wiley's," or "We don't have any water at Dr. Elliot's
3 horse farm," or "We don't have any water on the Lennhoff
4 Trust Dairies," that kind of thing. And so the guy on
5 the other end says, "Okay, we'll open up the valves and
6 we'll give you more water."

7 It's kind of like that situation. It's an
8 unmeasurable -- someone asked yesterday about
9 measurements, cubic feet per minute. You know, I'm used
10 to that from the San Joaquin Valley. They tell us every
11 day how many cubic feet and how many acre-feet they're
12 releasing from the dams. And this thing, it's a guess
13 and they've got this formula they use, okay. So we
14 really don't know how much water's going down there. We
15 do know that that agreement can be manipulated and our
16 needs, riparian needs, are many times not met.

17 In fact, case in point, we can see water come in on
18 the Paso Robles Creek back up against a rented farm we
19 have there and head north to Monterey County. We can
20 look to our left a hundred feet and the river will be
21 dry, and we'll have to go down maybe two miles to the
22 Atascadero water -- well field where we'll find again
23 water -- surface water.

24 So that thing is something that I feel has been
25 abused. It's not clearly managed. The blame is put on

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1 the County, who's trying to operate the dam for the
2 benefit of others, and I'm real concerned. If this
3 thing's going to be kept in operation, we need somebody
4 to come in and run that Live Stream Agreement right.

5 MS. SCARPACE: So the live stream -- the so-called
6 live stream is not continuous? It's spotty, is that what
7 you --

8 MR. MORA: If it's done right, and if you put
9 pressure on the engineering staff -- and, you know, I
10 can't tell you their names, but if you call in they'll
11 turn on that water and that water will make a continuous
12 flow over the rock ledges, the natural rock dams in the
13 river, and continue until it hits the Paso Robles Creek,
14 which will run just about eleven months a year. It will
15 reach that level and go on towards Paso Robles.

16 MS. SCARPACE: But it takes someone to tell them
17 that there's a dry condition?

18 MR. MORA: Over the years it's taken a number of
19 times. In fact, as Pete pointed out, as Mr. Cagliero
20 pointed out, there's times when they wanted to take that
21 Live Stream Agreement away from us. And that's our
22 lifeline for riparian users in that section, and that
23 section would be about a distance of four miles.

24 MS. SCARPACE: Okay. I think that's about all the
25 questions.

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1 Otto Schmidt, I'd like to ask you a few questions.

2 Did you submit a statement to the State Water Board?

3 MR. SCHMIDT: Yes, I did.

4 MS. SCARPACE: And is that statement true and
5 correct?

6 MR. SCHMIDT: Yes, it is.

7 MS. SCARPACE: How long have you lived -- well,
8 first of all, do you live in the canyon area below the
9 Salinas Dam?

10 MR. SCHMIDT: Yes, I do. I live about three miles
11 below the reservoir, and I have about a half a mile of
12 the Salinas River runs through my property. I have lived
13 there and owned the property for approximately eighteen
14 years and lived on the property for fourteen of those
15 years about one hundred fifty feet from the river itself.

16 Being so close to the river, I seen the continuous
17 fluctuation and variations and ebbs and flows of the
18 river's health and viability through all the seasons and
19 cycles, whether natural or manmade, and from the drought
20 years to floods, from fires to questionable live stream
21 policy and releases of which I consider kind of a
22 politically manipulated formula, also.

23 The effects on the river and riparian habitat have
24 been quite dramatic with these fluctuations. I
25 continuously see changes in the clarity, velocity,

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1 temperature, turbidity and level of silt buildup. The
2 last problem, silt buildup, can be catastrophic to the
3 fishes' nesting success. Also, the lack of early spring
4 scouring affects the establishment of non-native aquatic
5 plants, which are most commonly around my area is this
6 invasive non-native common millifol, which is quite
7 traumatic in its overabundance in the river with a lack
8 of spills and also with the removal of debris, all these
9 degrading the river habitat.

10 And over the years, whether it's been through
11 drought cycles and then these gentlemen have always
12 talked about with the implementation of this project
13 whereas it becomes a -- quite necessary for these spills
14 to take place. The live stream has basically no effect
15 on the removal of the silt buildup in the river, which
16 for the health of the river, which I have seen fluctuate
17 in both population of fishes and amphibians, frogs,
18 turtles, as such, but the spills only are able to do this
19 and to clarify the water -- even though they happen in
20 the winter and early spring, this flushing, is what's the
21 only way to eliminate this dramatic silt buildup in the
22 river.

23 MS. SCARPACE: Have you observed any steelhead in
24 the Salinas River where -- you know, in that canyon area?

25 MR. SCHMIDT: Yes, over a number of years I've

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1 caught and observed juvenile steelhead four to six inches
2 and smaller and have caught most recently, before it was
3 against the law, of course, about a 22-inch steelhead
4 which I have a photograph of which I caught and in the
5 same year saw maybe three dozen juvenile steelhead in
6 this part of the river that they claim is not habitable
7 by steelhead or conducive to the rearing of steelhead,
8 which I must say that the presence of steelhead is a
9 fact.

10 MS. SCARPACE: I'd like to show you this
11 photograph. That's CSPA's Exhibit Z.

12 Can you identify is that you --

13 MR. SCHMIDT: Yes, it is.

14 MS. SCARPACE: -- and what does the photograph
15 depict?

16 MR. SCHMIDT: Myself just holding up this steelhead
17 which was kind of gut hooked or deeply hooked, which I
18 caught in the spring of 1997.

19 MS. SCARPACE: Was that caught near your property?

20 MR. SCHMIDT: That was caught right in the center
21 of my property on the Salinas River -- in the Salinas
22 River, I should say.

23 MS. SCARPACE: Well, go ahead.

24 MR. SCHMIDT: Again, throughout all of this -- my
25 testimony and to these gentlemen is I don't understand

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1 how they have said that this project is not going to have
2 an effect on the river and, therefore, they're not going
3 to have to do any mitigation as far as releases other
4 than the live stream.

5 And I find that ridiculous or it's absurd that they
6 would not even consider some sort of a mitigation to --
7 periodically in these most dramatic times to have
8 these -- some type of mitigated releases at least to keep
9 this scouring effect, which is all and everything to the
10 health of this very vital part of the river.

11 MS. SCARPACE: Have any of your -- are you aware of
12 any steelhead that your neighbors have caught or --

13 MR. SCHMIDT: As I think -- I'm not sure if it was
14 Mr. Henderson mentioned they went out for one period, I
15 think in December of '97, and visited a neighbor of mine
16 who caught -- he's up river, on the next property up
17 river. He caught a much larger steelhead which he had
18 had in his freezer, and then they had a biologist take a
19 scale from it to specifically identify it or -- that it
20 was a steelhead and they never got back to him as to this
21 identification, ut he's admitted or stated that they
22 probably think it is -- I mean, which it was.

23 MS. SCARPACE: Have you found that the temperatures
24 of that stretch of the Salinas River down the canyon have
25 fluctuated and sometimes it is too warm for --

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1 MR. SCHMIDT: Oh, most dramatically at certain
2 periods in these droughts and with this invasive type of
3 species like I was talking to -- or referring to the
4 millifoil it can also increase the temperature of the
5 river, and with this lack of releases or the slowing of
6 the releases or the buildup of the silt both the
7 turbidity and the temperature of the water is
8 dramatically affected.

9 MS. SCARPACE: Have you personally had to ask the
10 County to release more water when you find --

11 MR. SCHMIDT: I have inquired but -- I'm kind of on
12 a first name basis with these two gentlemen that operate
13 the dam, or at least we talk back and forth. They're
14 very friendly and I just question them as to when they
15 are going to take another trip out and look to see if
16 they -- they do it daily towards the end of the summer or
17 at hot times and about the releases of this for the live
18 stream and go to these six different locations that they
19 deem to be the first areas that will kind of go below the
20 ground and then they can start the live stream or start
21 the releases, which I've also noticed that with these
22 releases that they -- if you have during -- during the
23 wet years and during the storms this is not about the
24 live stream releases but you can tell -- a gentleman was
25 talking about the creeks' influences above -- we have the

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1 Los Pilitas Creek is the only creek really dramatically
2 above us and you can watch the level of the river go up a
3 couple of three feet during a storm but until -- maybe a
4 foot and a half, but until it reaches spill then does it
5 only start to dramatically increase the heighth and
6 volume of water coming through. And so with that held
7 back there is -- the volume of the water is drastically
8 reduced.

9 MS. SCARPACE: So if there are reduced spills as a
10 result of implementing this expansion plan, do you feel
11 that there will be an affect -- an adverse affect on the
12 river below the dam?

13 MR. SCHMIDT: Obviously. It will be catastrophic,
14 I believe. The gentleman always is calling these numbers
15 irrelevant, but I figure whether it's twenty-one or
16 seventeen percent they were initially ignoring and/or
17 admitting to, I should say, that this area between the
18 reservoir and the first five or eight miles to Santa
19 Margarita were going to be the most dramatically affected
20 by this reduction in spills, but that that area was not
21 going to receive any kind of mitigated releases and/or
22 any other type of increase in water.

23 MS. SCARPACE: Okay. Do you find that you -- that
24 the County checks this canyon area often enough to
25 determine whether releases need to be made or do you and

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1 your neighbors have to report, you know, that water's
2 needed?

3 MR. SCHMIDT: They don't really check our area at
4 all. They go downstream or north to these other six
5 spots that they check for.

6 MS. SCARPACE: So they're only checking their
7 gauged spots that you're aware of?

8 MR. SCHMIDT: Correct. I don't think -- well, I'm
9 not sure they're gauged. They just drive by and look at
10 certain areas that they have deemed to be the lowest or
11 the first places that will collapse as to where they --
12 as to where the water disappears.

13 MS. SCARPACE: So do you find that that's
14 inadequate and that reports have to be made?

15 MR. SCHMIDT: I don't know -- well, as to what
16 these gentlemen are referring to about Atascadero I'm not
17 sure -- I mean, I've even seen the live stream when there
18 is not a, you know, actual live stream even after they're
19 releasing but --

20 MR. SLATER: Mr. Brown, I'd just like to register
21 an objection --

22 H.O. BROWN: Mr. Slater, go ahead.

23 MR. SLATER: -- that the hearing notice indicated
24 that the Live Stream Agreement wasn't an issue here
25 today. That issue is not on trial, and most of this

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1 testimony is going towards the adequacy of the Live
2 Stream Agreement.

3 H.O. BROWN: Yes. I've been very lenient on that
4 issue, Ms. Scarpace, but Mr. Slater does have a point.

5 Do you have a response?

6 MS. SCARPACE: Well, we still object to limiting
7 the scope of this hearing and we feel that since the
8 Final EIR has made the Live Stream Agreement their only
9 mitigation, I think the adequacy of that mitigation
10 measure is definitely an issue here.

11 MR. SLATER: Mr. Brown, that misstates the
12 evidence --

13 H.O. BROWN: Mr. Slater.

14 MR. SLATER: That misstates the evidence. That
15 misstates the evidence. The EIR does not rely on the
16 live stream as a mitigation measure.

17 H.O. BROWN: Ms. Scarpace, your response.

18 MS. SCARPACE: Well, I just differ in opinion.

19 H.O. BROWN: Okay.

20 MR. SCHMIDT: Mr. Brown --

21 H.O. BROWN: Your objection has been noted several
22 times before on that issue.

23 Mr. Schmidt, do you have something?

24 MR. SCHMIDT: The only reason, sir, that I raised
25 this -- brought in the live stream was to -- from my own

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1 personal thousands of times of observing the river or
2 thousands of days observing the river that I found that
3 only the spills have an affect on this silt problem I was
4 mentioning and the scouring of the river and the live
5 stream has basically no affect. And all I was
6 demonstrating was -- doing was testifying to that, sir.

7 H.O. BROWN: Okay. I think that point's been made
8 here. I would ask you to move on.

9 MS. SCARPACE: Okay, I'll do so.

10 All right. Are you -- being below the dam, are you
11 concerned about the seismic safety of the dam?

12 MR. SCHMIDT: Most definitely, obviously, and I was
13 quite disturbed at how on the appendix to the EIR and
14 responses of '93 and '97 that -- two statements that I
15 brought up about the blind faults and the
16 reservoir-induced seismicity were dismissed as a --
17 basically -- I'm trying to get the semantics they used --
18 unlikely.

19 This is unlikely the proposed expansion of the
20 reservoir will result in this, but that they had only
21 tested the levels since the mid -- or from the mid --
22 since the mid 1970s and, to my knowledge, that
23 reservoir-induced seismicity usually occurs within the
24 first period of -- say the first three or four years of
25 when they increase volume that's taken place in these

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1 areas where they have occurred and that they occurred in
2 California only about six known, what they said in this,
3 reported instances.

4 Oh, and I was curious if the consultants were
5 familiar with the California Division of Mines and
6 Geologists, I guess it is, map that finally brings the
7 Rinconada Fault in that area to a -- kind of an active
8 fault area near the zone sources on the map so -- that
9 was a 1997 map, whether that was referenced into any of
10 their studies or models in their EIRs where they have to
11 update or upgrade their engineering and structural
12 analysis?

13 And that's it, thank you.

14 MS. SCARPACE: Thank you.

15 Mr. Frank, I have some questions for you.

16 Can you give your qualifications as an expert in
17 this matter?

18 MR. SCHMIDT: Can I interrupt for one moment or is
19 it --

20 H.O. BROWN: It's up to your, counsel.

21 MR. SCHMIDT: I'm sorry. Lorraine?

22 MS. SCARPACE: Sure.

23 MR. SCHMIDT: I forgot. I don't know if I can --
24 can one enter in one -- you were talking about the
25 history of steelhead -- or I was talking about the

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1 steelhead history. I was wanting to enter in -- I've got
2 from the Water Quality Control Board in San Luis Obispo a
3 history of steelhead and salmon migrations in the Salinas
4 River for the last ninety years with some testimony
5 gathered by a Mr. Harold Franklin of Paso Robles.

6 H.O. BROWN: Mr. Slater.

7 MS. SCARPACE: We weren't aware of it at the time
8 we submitted our exhibits.

9 MR. SLATER: I think we'd like an opportunity to
10 see what it is. It's a surprise piece of evidence.

11 MS. SCARPACE: We could arrange to have copies
12 made.

13 H.O. BROWN: Let's see if there's an objection.

14 MR. SLATER: Yes, there is an objection. It's not
15 authenticated. We don't know that it's an official
16 document. We don't know that Mr. Franklin prepared it.
17 He's not here to testify to the contents. It's not a
18 public record. It's not been prepared in any way or
19 acknowledged by a public agency of any kind. So we do
20 object to it.

21 H.O. BROWN: Ms. Scarpace, can you lay a
22 foundation?

23 MS. SCARPACE: Well, I don't know if that might be
24 a business record.

25 MR. SLATER: Mr. Brown, even if it was a business

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1 record, it would require a witness here to testify to
2 authenticate it, to lay a foundation.

3 H.O. BROWN: That's correct.

4 MS. SCARPACE: All right. I guess I don't know how
5 it would qualify.

6 MR. SCHMIDT: So, therefore, it's inadmissible,
7 sir?

8 H.O. BROWN: Yes, I'm going to sustain the
9 objection.

10 MR. SCHMIDT: Is there no other way to submit it,
11 then, for your perusal?

12 H.O. BROWN: If you can lay a foundation with an
13 author or someone that could substantiate it and then get
14 copies to all the parties, then I would consider it.

15 MR. SCHMIDT: And laying a foundation is having a
16 certified --

17 H.O. BROWN: (Nodding of the head.)

18 MR. SCHMIDT: Okay.

19 H.O. BROWN: That's correct.

20 MR. SCHMIDT: Thank you.

21 MS. SCARPACE: I'll go on to Mr. Frank.

22 MR. FRANK: You asked me to state my
23 qualifications.

24 I'm a registered professional forester, Bachelor of
25 Science Degree from Humbolt State College. I was

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1 employed by the California Department of Forestry for
2 thirty years. During that time I worked in fire
3 protection, watershed management, staff here in
4 Sacramento and also administration.

5 Since retirement I've been working as a practicing
6 consultant to landowners in the rehabilitation of streams
7 and riparian corridors. During my time here in
8 Sacramento I worked on the staff and I prepared the
9 Department of Forestry's regulations for the
10 implementation of CEQA and I reviewed hundreds -- well,
11 perhaps not hundreds, but dozens of environmental impact
12 reports.

13 I also served on the Mitigation Advisory Committee
14 for the City of San Luis relative to the proposed
15 project.

16 MS. SCARPACE: Can you tell the Board about some of
17 your observations of steelhead in the Salinas River and
18 its tributaries.

19 MR. FRANK: Yes. I was born and raised in the
20 small town of Atascadero on the upper Salinas River. And
21 I recall when I was young, in the early '40s or mid '40s,
22 my dad had hired someone to do some work on the property
23 and during that time he actually speared two large
24 steelheads. It made quite an impression on me. I can
25 still remember those big steelhead that he speared and

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1 they tasted very good. I don't think they were legal,
2 but they were good tasting.

3 In the late '40s I started fishing. I've been fly
4 fishing for about fifty years now, and I fished Paso
5 Robles Creek, Atascadero Creek and Tassajero Creek and
6 observed steelhead in each of those streams. As a matter
7 of fact, I hooked a steelhead in Paso Robles Creek in the
8 early '50s. It was a nice fish. Needless to say, he got
9 away. I was fishing with real light gear, but I can
10 still remember. I can still remember that to this day,
11 that fish coming out of water and heading upstream, and I
12 didn't stop him; but, yes, there were a lot of fish in
13 the early '40s and up until the mid '50s in the streams
14 that I observed.

15 More recently, I had an opportunity to do some -- a
16 survey of Atascadero Creek. That was this spring with a
17 fisheries biologist from the Department of Fish and Game.
18 Her name was Jennifer Nelson and we did some
19 electrofishing in Atascadero Creek and -- or
20 electroshocking and we actually netted about -- well,
21 about twenty fish. As a matter of fact, I want to change
22 my statement because I saw about forty fish, but we only
23 caught about twenty of them in a net. So that's not
24 exactly correct. They're pretty quick, but there were a
25 lot of fish in Atascadero Creek.

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1 And they have to be progeny of steelhead because in
2 1994 the Highway 41 fire burnt eighty-five percent of the
3 Atascadero Creek watershed, and it was subject to heavy
4 fire flood sequence flooding, and debris flows and mud
5 basically swept that whole watershed clean of any of the
6 fisheries, and so the recent observations were no doubt
7 from anadromous fish spawned.

8 MS. SCARPACE: Do you feel that this proposed
9 expansion of the Salinas Dam will adversely affect the
10 steelhead population in the tributaries and Salinas
11 River?

12 MR. FRANK: Well, I'm concerned that the dam has
13 had an adverse impact on the steelhead resource. I think
14 it was stated by Dr. Gray that the steelhead population
15 is very low in the upper Salinas. However, there is a
16 residual population.

17 I think that any increment of damage that occurs to
18 this very marginal population is going to be damaging.
19 I'm particularly concerned that the debris flows have
20 been trapped in the reservoir from flood sequence and so
21 forth, and these debris flows and high flood occurrences
22 are necessary in a stream's dynamic situation to provide
23 deposition for riparian growth, and without these
24 depositions you have a problem of maintaining good
25 riparian vegetation.

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1 Along with this concern is the lack of flushing,
2 because there's a combination of deposition and flushing
3 of stream channels on their natural conditions. The dam
4 itself and the proposed raising of the dam will reduce
5 the frequency and volume of flushing flows.

6 Basically the steelhead resource and the downstream
7 water users needs converge because the steelhead need a
8 nice stream -- clean stream channels and shade and so
9 forth, which reduces evaporation, of course, and keeps
10 the temperature down and they also -- and this provides
11 for a clean recharge area so that it increases
12 infiltration down into the aquifers.

13 So in many respects the steelhead need the same
14 things that we need, and so I am concerned about the
15 impact of the reservoir, particularly the impact long
16 term. If -- I think that you put this into the record.
17 Jim Goodrich, a former state climatologist, did a little
18 study here and it's called "100 Years of Rainfall Trends
19 in California." And the recent drought put stress on our
20 aquifer, particularly Atascadero. We had problems in the
21 '87 and '90 drought. However, that was -- as Jim
22 Goodrich points out, was a rather minor drought as
23 compared to some of the earlier droughts, the drought
24 that -- the dry spell that lasted from 1917 to 1934.

25 Now, if you talk about impoundment of additional

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1 water in the Salinas Reservoir, any little peaks that
2 might have occurred during that dry period would probably
3 be captured in their entirety. And if there were no
4 flood flows and no scouring flows during that period, it
5 would have a devastating effect on groundwater recharge
6 as well as riparian growth in terms of steelhead
7 regeneration and I think it would be disastrous.

8 If -- reading further here, he also did some
9 investigation of rainfall records further back through
10 tree ring studies done by Harold Fritz of the Laboratory
11 for Tree Ring Research in Tucson, Arizona, and they found
12 that there was a drought that lasted from 1755 until 1820
13 in California. And so I suspect that this recent history
14 that we have experienced represents -- and I believe
15 Dr. Gray mentioned this -- was a period of unusually wet
16 period and I think we should look at the long-term
17 history.

18 One thing I learned as -- in fire protection with
19 CDF is that California weather is very hard to predict.
20 It will make a liar out of you every year, but you can
21 bet it will repeat itself. And so I think we have to be
22 very careful what we do here so that we'll have have
23 long-term impact on our water resources.

24 MS. SCARPACE: Thank you.

25 Leon Chaulet, I'd like to ask you some questions.

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1 MR. CHAULET: Thank you.

2 MS. SCARPACE: Oh, I forgot one question to
3 Mr. Frank. You better give the mike back, sorry.

4 BOARD MEMBER STUBCHAER: Mr. Chairman, I cannot
5 hear the attorney.

6 H.O. BROWN: We're really having difficulty hearing
7 you up here.

8 MS. SCARPACE: Oh, sorry.

9 H.O. BROWN: It would be helpful if you just would
10 keep that mike right in front of you and that way we can
11 hear every word you're saying

12 MS. SCARPACE: Okay.

13 Mr. Frank, was the statement that you submitted to
14 the State Water Resources Control Board true and correct
15 with the change that you mentioned?

16 MR. FRANK: I noticed one more error in there. I
17 think there's one period that I cited it's ten years and
18 it should have been eight years in terms of the drought
19 history -- recent drought history.

20 Otherwise, it's correct.

21 MS. SCARPACE: Okay, thank you.

22 Mr. Chaulet, can you briefly state for us your
23 qualifications as an expert.

24 MR. CHAULET: Yes, I'm a licensed civil engineer.
25 My principal practice is in the area of geotechnical

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1 engineering, which involves design and construction of
2 dams and reservoirs, which I've done for several years.

3 Been involved in my profession for about
4 thirty-five years. During the course of that I've
5 written -- I've participated in a number of EIR studies,
6 and I'm also a licensed contractor and as such have done
7 grading of reservoirs and dam construction as well.

8 MS. SCARPACE: Okay. Did you submit a statement to
9 the State Water Resources Control Board which in turn --
10 well, we submitted it to them?

11 MR. CHAULET: Yes, I've submitted a written report
12 entitled "Partial Overview Assessment" dated September
13 20, 1999.

14 MS. SCARPACE: And was that report true and
15 correct?

16 MR. CHAULET: Yes, it was -- it is.

17 MS. SCARPACE: Can you -- let's see, what is the
18 square mileage of the tributary area above the Salinas
19 Dam -- the watershed area, rather?

20 MR. CHAULET: I understood from the FEIR that it is
21 approximately 112 square miles. I did not double-check
22 that number myself.

23 MS. SCARPACE: And about what percentage of the
24 Salinas River Watershed does that constitute?

25 MR. CHAULET: I believe by comparison something

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1 close to twenty-nine percent.

2 MS. SCARPACE: And --

3 BOARD MEMBER STUBCHAER: Excuse me. Was that of
4 the total watershed at the ocean or -- when you gave the
5 percentage twenty-nine percent?

6 MR. CHAULET: Twenty-nine percent would be that
7 portion of the so-called Paso Robles basin, if you will,
8 tributary area, such as it is.

9 BOARD MEMBER STUBCHAER: All right.

10 MS. SCARPACE: And approximately what is the length
11 of the canyon area below the dam?

12 MR. CHAULET: Well, with respect to the meandering
13 path if you go along that route, by the time you wind up
14 out of the narrow portion of the canyon you've traversed
15 almost fourteen miles and, of course, it extends as far
16 as the Pacific Ocean. So depending upon how far you want
17 to go along the Salinas corridor.

18 MS. SCARPACE: In studying this particular project,
19 did you find that the spills would be -- the frequency of
20 spills would be reduced by the proposed project?

21 MR. SLATER: Mr. Brown, I'm going to object on the
22 basis that the appropriate foundation for this witness as
23 an expert on the subject of hydraulic engineering,
24 hydrogeology, hydrology has not been laid.

25 The witness clearly has technical expertise in

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1 geotechnical work and in preparing environmental impact
2 reports as related to seismic activity, hydrostatic
3 activity, hydrostatic phenomena but I have -- would
4 request that some foundation be laid for his expertise in
5 the area of hydrology, hydraulic engineering or related
6 expertise.

7 H.O. BROWN: Ms. Scarpace.

8 MS. SCARPACE: Mr. Chaulet, would you like to
9 clarify that.

10 MR. CHAULET: Yes. As far as the study of water
11 movements through substrates is concerned, it's a viable
12 extension of any kind of civil engineering study, which
13 I've certainly done, and in the design of dams and
14 reservoirs, which I participated, as testified. It's an
15 integral part of determining those aspects as well.

16 So I feel comfortable evaluating and assessing
17 hydrogeologic data.

18 MR. SLATER: Mr. Brown, I don't think designing
19 dams and reservoirs has anything to do with competency in
20 examining flow regimes.

21 H.O. BROWN: Mr. Chaulet is a registered civil
22 engineer. As I understand your profession, they peak in
23 the area of their expertise which can be very wide and
24 diversified. And I would expect that Mr. Chaulet when he
25 gives his opinion or statement of fact, that it's with

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1 respect to his profession.

2 Please proceed.

3 MR. CHAULET: Thank you.

4 MS. SCARPACE: Did you make your calculations from
5 the Final EIR on this project?

6 MR. CHAULET: Yes, I endeavored to use the same
7 data in order not to have particularly arguments at this
8 stage regarding the veracity of the data, and so that's
9 one aspect that was circumvented by doing so.

10 MS. SCARPACE: Okay. In making these calculations,
11 what did you determine to be the reduction in spills that
12 would occur as a result of this project?

13 MR. CHAULET: Well, obviously it depends upon a
14 number of variables. Basically, the operation of a
15 reservoir is really no more than a routing scenario
16 whereby you balance waters coming in versus waters either
17 being taken out voluntarily or controlled versus
18 uncontrolled. And depending upon how much take there is,
19 for instance, by the City for its particular needs, which
20 tends to vary from year to year as well, you wind up with
21 different percentages of so-called spill reductions.

22 And, furthermore, statistics can be made to say a
23 number of things. If you look at the statistics such as
24 they are and you're using situations where you have no
25 spill at all, you can either include that as a year for

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1 which you average out your results or you can ignore
2 those as being either exorbitant one direction or
3 another.

4 In other words, you can you have a sizable
5 difference in the amount of salinity reduction when you
6 have very low outflows and, as such, distort the outcome
7 as well. It's one of the fallacies of using so-called
8 averages, average spill reductions. And in doing my
9 numbers work, if you will, I find that the reduction in
10 spills can vary anywhere from twenty-five to even fifty
11 percent.

12 As a matter of fact, when you look at the overall
13 so-called permitted take, if you will, which is very
14 close to 54,000 acre-feet per year, and you distribute
15 that over the past fifty plus years of history, if,
16 indeed, the City were legitimately taking that much, it
17 would take all but seven of the last half a century
18 flows.

19 MS. SCARPACE: Have you made any analysis of the
20 quantities of flow reduction that would occur?

21 MR. CHAULET: Well, I have submitted in my report
22 several tables that itemize the various relationships of
23 inflows and evaporation and take from the City and what
24 have you and -- for both an existing reservoir situation
25 as well as a projected enlarged reservoir, and

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1 corresponding numbers obviously differ. These are
2 tabulated in here and can be questioned on an individual
3 basis if you like.

4 MS. SCARPACE: Perhaps you can just summarize it
5 for us.

6 MR. CHAULET: In essence, for instance, on Table
7 No. 1, I have a situation whereby between the years '71
8 through '95 season where we did routing for the water
9 when we started, for instance, in the beginning with a
10 volume of 22,243 acre-feet and then allowed for the
11 inflow and the live stream assignment as well as the
12 usage, which we used in this particular example at 7100
13 acre-feet and allowed for the evaporation and then wound
14 up a finished year volume and so forth, and then
15 correlated that to see what the spill reductions might be
16 when compared to the historical spills and came up with
17 the data that if you take this twenty-five year period
18 strictly on a twenty-five year basis, you would have
19 reductions on the order of twenty and a half percent.

20 However, if you ignored those years when there was
21 no spill or a hundred percent spill and wound up with a
22 thirty-year record when you actually had spills, the
23 amount of spillage reduction would be close to forty
24 percent.

25 Let's see, on Table No. 2, I took the actual use --

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1 usage of the water by the City, again during that
2 twenty-five year period, and resolved on the basis of
3 that that the reduction may vary, again depending upon
4 what active years that you used or taking the total
5 years, anywhere from twelve to almost forty-three
6 percent. And I also did a table which utilized their
7 data.

8 Looking at what the comparison was in terms of
9 contribution to the flow, the live stream and historical
10 spill flows, near the City of Atascadero and that of Paso
11 Robles and see when the dam is heightened as proposed,
12 determine the impact of the flows at those particular
13 locations, near Atascadero averaged around forty-nine
14 percent and that for Paso Robles around twenty-one
15 percent, and these are average -- are at a median flow
16 because I think they're more meaningful.

17 I eliminated the very high numbers because I think
18 they're very misleading, and that's why I feel the median
19 way of looking at these data is a much more desirable way
20 than the average, which can distort the numbers quite
21 readily.

22 I also did a routing for an allocation of the City
23 taking 10,000 acre-feet per year for the same period. On
24 the basis of that, resolved that the impacts of the
25 raising of the dam could be anywhere from twenty-six

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1 percent to almost fifty percent.

2 I did a similar-type study -- routing, rather,
3 assigning 8977 acre-feet to the use of the City, which is
4 presumably the maximum that they're allowed to take, and
5 resolved that the numbers were around twenty-nine percent
6 to fifty-five percent correspondingly.

7 MS. SCARPACE: Have there been any overall increase
8 in water demands for the Salinas River corridor in the
9 San Luis Obispo County that you've noted?

10 MR. CHAULET: Well, it would appear based on the
11 data that I've had opportunity to verify that we have two
12 situations happening which, I believe, are progressively
13 becoming larger and will have more and more of an impact
14 on this particular corridor, one of which is the
15 population growth.

16 The City of Paso Robles and Atascadero, in
17 particular, as well as Santa Margarita -- or, rather,
18 Templeton have experienced rapid population growth as of
19 1980, which is probably on the order of two to two and a
20 half times as much as the City of San Luis Obispo itself.

21 As a consequence, their demand on this water is
22 beginning to have an impact as well as the proliferation
23 of the dry land being changed over to viticulture
24 purposes and these, in turn, presume a great deal of
25 water as well.

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1 So you have a two-pronged attack, if you will, on
2 the available subsurface water, which I think is going to
3 have a -- how do you say, a compounding impact because
4 already we have the basin being in overdraft, meaning the
5 Paso Robles basin as has been testified to already,
6 something on the order of 30,000 in the earlier years of
7 1960 to '75, as I recall, and since that time others,
8 including Fugro, coming up with a number that's almost
9 twice as big, on the order of 60,000 per year, and I
10 don't see this scenario abating. I see it only growing
11 worse with time.

12 MS. SCARPACE: So with this increasing demand for
13 water in this area of the Salinas River, would that make
14 the impact of the project even greater, do you feel?

15 MR. CHAULET: Yeah, it can't help but have a
16 negative implication on it. I personally am of the
17 opinion if you extend these trends forward as they appear
18 to be, that you can draw the rational conclusion that
19 there is no excess water to take.

20 MS. SCARPACE: Is there, in your opinion, water
21 available to appropriate for the expansion of this dam?

22 MR. CHAULET: Well, you know, the water that you're
23 appropriating comes from runoff and it comes from the --
24 about a third of the overall tributary area, and so
25 whatever increase of taking that you're going to do here

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1 is going to have a significant impact on further
2 downstream.

3 It occurs to me, too, that there are ample
4 opportunities to mitigate these numbers. In other words,
5 you know, the Lake Nacimiento pipeline, I think, is a
6 valuable source and I think it is -- in my opinion, it's
7 going to happen within the next three, at the most five,
8 years.

9 I think from what I understand is San Luis Obispo
10 has an entitlement on the order of about twenty percent
11 of the assigned volume, which I think is in excess of
12 3,000 acre-feet per year.

13 I understand, also, that recently there's been an
14 opportunity made available whereby a local oil company
15 has acknowledged that they have an easement and/or a
16 pipeline therein which could facilitate moving of water
17 from Lake Nacimiento to Whale Rock or some other
18 facility, which I think will have the potential for
19 reducing the cost of that.

20 I understand, further, that the communities of
21 Pismo Beach and I think Oceano, both of them have excess
22 water that they claim is available for sale to the City
23 if they choose to exercise that option.

24 And, personally, based on the data that I've seen,
25 I think there's another mitigation effort that could be

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1 implemented and, that is, implementing what I consider is
2 a reward methodology whereby you, you know, allow people
3 to conserve the use of water and as such you can
4 drastically offset any real drastic needs for the kinds
5 of things that we're talking about.

6 I think there's a valid basis for that. If you
7 look at the consumption data that is available, we find
8 out that during the drought years in the mid '80s to the
9 early '90s there was a drastic drop in the amount of
10 water used, and I think it was done primarily because
11 they informed the public that this was a desirable thing
12 to do and they responded. And according to that, I see
13 they have yet to bounce back to the prior rate increases
14 that -- the consumption increases, rather, that they had
15 during the early two, three decades before that. So I
16 think that's another option that needs to be looked at.

17 MS. SCARPACE: So would it be your conclusion that
18 the City of San Luis Obispo has perhaps more options for
19 seeking water than the cities of Templeton, Atascadero
20 and Paso Robles?

21 MR. CHAULET: In my judgment they do. You know,
22 Atascadero and Templeton and Paso Robles as well all have
23 this aquifer to draw from, and that's their source of
24 water.

25 For the City to encroach upon it having, first of

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1 all, turned down by voting not to join the state water
2 pipeline system, I think that was a gross oversight and
3 ironically now they have an option to purchase water from
4 that same source if they care to.

5 And so, yes, I would say the people that live in
6 the corridor should have the principal right before the
7 water gets under their feet and not to assign it to
8 someone to undermine, if you will, the growth and
9 utilization of that corridor for their own purposes.

10 MS. SCARPACE: Okay. I have no further questions.

11 Mr. Cagliero, you wanted to add something?

12 MR. CAGLIERO: Yes, lorraine. I mentioned I was
13 concerned about my riparian water rights. I was visiting
14 with Mr. Maloney during the break and we were talking
15 about how far back the irrigation went in our area and
16 the lands before we owned them, and they go back clear to
17 the mission days and before the State was formed. He
18 informed me that we actually even have mission rights
19 which are before riparian rights, which I didn't know at
20 this time. So we'd like to protect those rights as well,
21 and I'd like the State Board to consider that.

22 MS. SCARPACE: Okay, thank you.

23 H.O. BROWN: This concludes your direct?

24 MS. SCARPACE: Of this panel.

25 H.O. BROWN: You have other witnesses?

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1 MS. SCARPACE: Yes, but they -- I have a biologist
2 to call and some of my subpoenaed witnesses I felt I
3 wouldn't have time for so I told them to come back Monday
4 because I thought we were running out of time.

5 H.O. BROWN: Ms. Cahill, would you like to start
6 with cross with these witnesses?

7 MS. CAHILL: Wouldn't Mr. Slater go first?

8 H.O. BROWN: I have you as going next.

9 MS. CAHILL: Oh. That would be fine. I really
10 don't have any -- I had only one question really.

11 H.O. BROWN: Okay.

12 MS. CAHILL: I had assumed that when the applicant
13 was doing cross, they would be the first to cross but
14 doesn't matter.

15 ----oOo----

16 CROSS-EXAMINATION

17 OF CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

18 BY CITY OF PASO ROBLES

19 BY MS. CAHILL

20 MS. CAHILL: I just wanted to ask, Mr. Cagliero, if
21 you could indicate where your farm is and where your
22 wells are.

23 MR. CAGLIERO: Okay. Our farm is north of Paso
24 Robles about six and a half miles. Wellsona Road crosses
25 the freeway there. We begin our operations at Wellsona

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1 Road and go north from there to the Australia River.

2 MS. CAHILL: Okay. Would it be helpful if we
3 pulled that map up and you could indicate where that is,
4 or is that a clear enough description?

5 MR. CAGLIERO: I think that we can be clear enough.
6 Like I said, it goes from Wellsona Road, which is
7 probably six miles north of Paso Robles on the freeway.
8 Our farming operations start there. They go up Airport
9 Road -- I mean Wellsona Road slightly. They go along the
10 river there. They proceed all the way to the Australia
11 River, they stop and they begin again on the path to San
12 Miguel Bridge along the Salinas River again on the
13 Tannahill property. We lease property up there from the
14 Salinas River underflow, also, and we go from there to
15 the Camp Roberts boundary.

16 MS. CAHILL: Okay. So this would be north of and
17 that is downstream of the City of Paso Robles?

18 MR. CAGLIERO: Yes.

19 MS. CAHILL: But within six miles or so of the
20 City?

21 MR. CAGLIERO: Right.

22 MS. CAHILL: Thank you, that's all.

23 H.O. BROWN: Mr. Slater.

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CROSS EXAMINATION OF
CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
BY CITY OF SAN LUIS OBISPO
BY MR. SLATER

MR. SLATER: I think we'd like to begin with
Mr. Cagliero. You're a farmer, aren't you?

MR. CAGLIERO: Correct.

MR. SLATER: You farm about 1600 acres; is that
correct?

MR. CAGLIERO: True. Between two ranches, yes.

MR. SLATER: Between two ranches.

MR. CAGLIERO: And also some leased property is in
that acreage.

MR. SLATER: And what type of crops do you farm?

MR. CAGLIERO: Irrigate alfalfa hay is our main
crop. Grapes would be our secondary crop. Irrigated
grains as a rotation-type crop. And then we also raise
cattle, but that doesn't have much to do with the
irrigation.

MR. SLATER: What's your annual water requirements
for those crops?

MR. CAGLIERO: The alfalfa uses about four
acre-feet per year per acre, and the grapes use about one
and a half.

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1 MR. SLATER: And your total use on an annual basis
2 is about what?

3 MR. CAGLIERO: Well, it would be -- in the alfalfa
4 operation right now we're probably slightly under a
5 thousand acres. So it would be pretty close to 4,000
6 acre-feet there.

7 MR. SLATER: So you use about 4,000 acre-feet a
8 year?

9 MR. CAGLIERO: In the alfalfa.

10 MR. SLATER: In the alfalfa portion?

11 MR. CAGLIERO: (Nodding of the head)

12 MR. SLATER: And what about the rest?

13 MR. CAGLIERO: The grapes would use about one and a
14 half acre-feet and we go half -- at the end of this year
15 we'll have 265 acres planted. So our next year use
16 should be one and a half times that.

17 MR. SLATER: One and a half times?

18 MR. CAGLIERO: One hundred sixty-five.

19 MR. SLATER: And you -- is your 1600 acres on one
20 single parcel -- legal parcel?

21 MR. CAGLIERO: No.

22 MR. SLATER: "No" it's not. And all your legal
23 parcels aren't contiguous to the Salinas River, are they?

24 MR. CAGLIERO: No, they are not. Most of them are.
25 I'd say about eighty percent of ours are. Maybe less

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1 than. Maybe closer to seventy percent probably.

2 MR. SLATER: Did you bring any deeds with you here
3 today?

4 MR. CAGLIERO: No I did not.

5 MR. SLATER: Did you bring any other evidence
6 whereby we might know whether or not your parcels are,
7 indeed, riparian?

8 MR. CAGLIERO: No. The only thing I have is when I
9 filed this protest, it gives you the section numbers and
10 stuff that we were irrigating at that time, which was --
11 at that time in that particular portion was around 360
12 acres, I believe, and we were using around 1200 acre-feet
13 on that portion of it at that particular time.

14 MR. SLATER: But you don't have any identification
15 of where your legal parcels exist, do you?

16 MR. CAGLIERO: With me right now, no.

17 MR. SLATER: "No."

18 MR. CAGLIERO: I can furnish those to you if you
19 like.

20 MR. SLATER: Have you filed any statements of
21 annual diversion and use with the State Water Resources
22 Control Board?

23 MR. CAGLIERO: No.

24 MR. SLATER: Okay. Ever?

25 MR. CAGLIERO: No. I do on one dam we have in

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1 Vineyard Canyon, which is a stock water dam. That's the
2 only one we do it on.

3 MR. SLATER: And you don't hold any permits to
4 appropriate water from the Salinas River?

5 MR. CAGLIERO: I don't have to have any. I have
6 riparian rights and mission rights.

7 MR. SLATER: The answer is "no" you don't?

8 MR. CAGLIERO: No.

9 MR. SLATER: Okay. And you began farming in 1956,
10 correct?

11 MR. CAGLIERO: In this county, yes. We were
12 farming in Los Angeles County before that, Southern
13 California.

14 MR. SLATER: And the Salinas Dam was built in 1941
15 correct?

16 MR. CAGLIERO: Right.

17 MR. SLATER: So the Salinas Dam was there before
18 you, correct?

19 MR. CAGLIERO: It was before my presence there, not
20 before the irrigated ground in our area was there, no.

21 MR. SLATER: And on direct you testified that water
22 quality in your area is adversely impacted by salts added
23 by the City of Paso Robles, correct?

24 MR. CAGLIERO: I said that the quantity of water
25 was not as affected as much as some of the quality of

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1 water. On dryer years the quality of our water shows
2 more salt content than on years after flushing.

3 MR. SLATER: And is it your testimony that you'd
4 like the City of San Luis Obispo to release water to
5 flush those salts?

6 MR. CAGLIERO: I'd just like them not to expand the
7 dam so that we have no more reduction in flushes.

8 MR. SLATER: So the answer to that is "yes"?

9 MR. CAGLIERO: Yes, I don't want them to re-expand
10 the dam.

11 MR. SLATER: And are you testifying on your behalf
12 or on the behalf of -- on behalf of Cal SPA?

13 MR. CAGLIERO: On my behalf.

14 MR. SLATER: On your behalf?

15 MR. CAGLIERO: And behalf of North County
16 agriculture in our area, which I represent on the Water
17 Forum.

18 MR. SLATER: And as a member of -- testifying in
19 your own behalf I have a question whether or not you'd be
20 willing to reduce your water use to support instream
21 flows for fish?

22 MR. CAGLIERO: For fish?

23 MR. SLATER: Yes.

24 MR. CAGLIERO: Well, I think we'll do what we have
25 to do. We are reducing our water usage as we convert to

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1 vineyards, because we are converting alfalfa ground into
2 vineyard ground that takes less water per acre.

3 MR. SLATER: And when did you begin changing your
4 crop pattern from alfalfa to vineyards?

5 MR. CAGLIERO: Four years ago.

6 MR. SLATER: Four years ago. Thank you.

7 Mr. Mora.

8 MR. MORA: Yes.

9 MR. SLATER: You presently farm about three hundred
10 acres; is that correct?

11 MR. MORA: Right, of which a hundred acres are
12 irrigated.

13 MR. SLATER: A hundred acres are irrigated?

14 MR. MORA: Correct.

15 MR. SLATER: What crop would that be for?

16 MR. MORA: Primarily alfalfa and irrigated grains
17 at this time.

18 MS. SCARPACE: And do you know what your annual
19 water use is?

20 MR. MORA: Close to three acre-feet per acre
21 served, three hundred acre-feet.

22 MR. SLATER: So you use a total of three hundred
23 acre-feet a year?

24 MR. MORA: Per year.

25 MR. SLATER: And do you file statements of

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1 diversion and use with the State Water Resources Control
2 Board?

3 MR. MORA: No.

4 MR. SLATER: You've never done so?

5 MR. MORA: No, never.

6 MR. SLATER: Is your three hundred acres on one
7 contiguous legal parcel?

8 MR. MORA: No, it isn't. It's on about four
9 different parcels.

10 MR. SLATER: And is each one of those parcels
11 contiguous to the Salinas River?

12 MR. MORA: All but one.

13 MR. SLATER: And did you bring a copy of your deeds
14 here with you today?

15 MR. MORA: No, I didn't.

16 MR. SLATER: Now, you testified on direct that
17 Atascadero Mutual Water Company has had wells on your
18 property since 1960?

19 MR. MORA: They've actually had the permit to put
20 them in since 1914, and they have extensive development
21 from the 1960's through the '70s.

22 MR. SLATER: Okay. So from 1914 forward,
23 Atascadero Mutual Water Company's had wells on your
24 property, correct?

25 MR. MORA: No wells, no. They had the permits.

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1 MR. SLATER: Permits.

2 MR. MORA: The wells were drilled starting in about
3 1972.

4 MR. SLATER: So they owned property. They had
5 permits but they didn't --

6 MR. MORA: They owned a 40-by-40 foot square that
7 they put their well on and had access to that.

8 MR. SLATER: And when did they purchase that from
9 you?

10 MR. MORA: They did not. They had a right to that
11 starting in 1914 through the Atascadero Colony.

12 MR. SLATER: So in other words, when you purchased
13 the property in '48, it was already subject to that
14 issue?

15 MR. MORA: That's true. That's correct.

16 MR. SLATER: And your pumping -- it's true, isn't
17 it, that your pumping is impacted by the wells operated
18 by Atascadero Water Company?

19 MR. MORA: Absolutely.

20 MR. SLATER: Okay. And the same question: Would
21 you be willing to reduce your water use to support
22 instream flows for fish?

23 MR. MORA: Yes, I would to support flow,
24 absolutely.

25 MR. SLATER: Thank you, Mr. Mora.

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1 And now for Mr. Chaulet.

2 MR. CHAULET: Oh, yes.

3 MR. SLATER: Do you know what the per capita water
4 use is in Paso Robles, Templeton or Atascadero?

5 MR. CHAULET: I'm given to understand it's
6 somewhere between 125 and 145, I believe.

7 MR. SLATER: So if it was something higher than
8 that, you would be surprised?

9 MR. CHAULET: Yes.

10 MR. SLATER: Do you know what form of water
11 conservation measures they have there?

12 MR. CHAULET: I'm not aware of any.

13 MR. SLATER: You're not aware of any?

14 MR. CHAULET: No, sir.

15 MR. SLATER: And with regard to your written
16 testimony, the sources of the numerical data in your
17 evaluation are entirely identical to those contained in
18 the documents referenced in your testimony, correct?

19 MR. CHAULET: That's my understanding, yes.

20 MR. SLATER: And your contribution was to quote,
21 "selectively manipulate the data" for this report?

22 MR. CHAULET: That's correct. I used them in the
23 manner that I thought they should be, that's correct.

24 MR. SLATER: Okay. No further questions and I
25 think Ms. Hastings would like to --

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1 MS. HASTINGS: Just a couple questions for
2 Mr. Schmidt.

3 Mr. Schmidt, we understand that you have not been
4 designated as an expert for this hearing. However, you
5 do both in your written and oral testimony make several
6 conclusions about several wildlife and aquatic species
7 that you have either yourself witnessed in the stream
8 system or through the testimony of others.

9 Can you tell us what kind of qualifications you
10 have to identify aquatic species, first of all?

11 MR. SCHMIDT: Yes, I've -- all I've learned has
12 been through the approximate eighteen years that I have
13 lived on the river itself and maybe had about -- I don't
14 know, several thousand hours of observing these animals
15 and then I have a number of books that I key in and then
16 I refer or ask -- presented certain things to biologists
17 at Cal Poly to ask them whether these are -- what type of
18 species these would be, whether it would be plant or
19 animal or fish.

20 MS. HASTINGS: So you yourself do not hold any
21 advanced degrees in aquatic biology, for instance?

22 MR. SCHMIDT: Just architecture.

23 MS. HASTINGS: Okay. And the same question also
24 goes with respect to hydrology, do you have any formal
25 experience or qualifications in hydrology?

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1 MR. SCHMIDT: Only from what I've observed over the
2 eighteen years on the river that -- the biologists seemed
3 to have gone on in my area -- or not near my area but
4 only for one day to two days and I thought eighteen years
5 of observations might help the understanding of what was
6 taking place or at least give my observations as just a
7 resident.

8 MS. HASTINGS: And just one last question.

9 You did note a concern about variations or
10 fluctuations in flow over the years during your
11 residence.

12 Have you at any time taken any temperature readings
13 or turbidity samples or any kind of studies on your own
14 to record these fluctuations which you've testified to?

15 MR. SCHMIDT: I've taken the temperature readings
16 just to inform people how warm or cold it was for
17 swimming and/or when I was catching fish as to what
18 temperature it was when I was -- when the fish were
19 finally biting. That's about the extent of it.

20 MS. HASTINGS: Thank you.

21 MR. SCHMIDT: And turbidity, it was just a matter,
22 again, of observation.

23 MS. HASTINGS: Thanks very much.

24 MR. SLATER: Thank you.

25 H.O. BROWN: Okay. Staff, do you have cross?

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CROSS-EXAMINATION
OF CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
BY STAFF
BY MS. MROWKA

MS. MROWKA: Mr. Mora, you testified that you felt that there were impacts to you attributable to the City's project.

During what months of the year do you experience impacts on your well field?

MR. MORA: Starting approximately the first of August, August/September/October we see a dramatic drop in the flow -- I should say the underflow and those wells will go from a depth of ten feet from the surface down to ninety feet and they're dry. We can't run a turbidity below ninety.

MS. MROWKA: And is this occurring at a time period when the river is flowing?

MR. MORA: No, ma'am, it's occurring at a time period when the river is not flowing and that can last from the early part of August clear into next April when we have no water to pump.

MS. MROWKA: To the best of your knowledge, do you experience these impacts at a time when the City is diverting water or is the City not diverting at the time

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1 these impacts occur to you?

2 MR. MORA: It's at a time when they are diverting
3 water primarily.

4 MS. MROWKA: Do you know if it's a diversion from
5 storage or if they're directly diverting water at that
6 time from the river?

7 MR. MORA: I'm not positive, because at that time I
8 have no live stream in that area, which is about a
9 five-mile stretch. So we do not have a live stream at
10 that time of water running through.

11 MS. MROWKA: Do you know if water's flowing into
12 the City's reservoir at the time that these impacts
13 occur?

14 MR. MORA: I do not know that for a fact.

15 MS. MROWKA: Do you anticipate a greater level of
16 impact if the reservoir is increased in size?

17 MR. MORA: Absolutely, positively.

18 MS. MROWKA: Can you tell me what you base that
19 statement upon?

20 MR. MORA: I base it on about forty-five years of
21 experience drilling those wells, punching holes in that
22 ground and pumping and the experiences of my neighbors.
23 Some of us have six hundred foot wells, the level in
24 which we're dropping, the rapid recharge we get when the
25 Salinas spills, the competition we receive from the

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1 Atascadero Mutual Water Company, as well as any downflow
2 pressures or changes in that, I guess, spill.

3 If there's a change in that, then our wells are
4 basically dry. And it's just not irrigation wells. It's
5 domestic wells, also.

6 MS. MROWKA: Thank you. I believe you testified
7 that you have a dam in the river and then --

8 MR. MORA: No, ma'am, I do not have a dam.

9 MS. MROWKA: You said something about a rock dam.

10 MR. MORA: That is a natural outcropping and --
11 it's a natural rock dam. It's directly cross from a new
12 San Benito School that has been built in the Atascadero
13 School District. It's a natural formation.

14 On occasion we get cattle in the river or if we
15 have to move a tractor from one ranch to another or
16 caterpillars we take them through that area. That is a
17 natural rock dam that comes -- and reaches the surface at
18 both sides of the river.

19 At that point in the river I believe it would
20 probably be about six hundred feet wide. And if you
21 observe the flow during the spill process, you'll see the
22 foam and expression in the earth of the water diving,
23 however deep it goes.

24 So not only myself, but my neighbors observe this
25 phenomena. This is not on my property. It's on an

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1 adjoining neighbor's property.

2 MS. MROWKA: Have you had the opportunity, either
3 yourself or Mr. Cagliero, to review the California
4 Sportfishing Protection Alliance, Exhibit CC, which is
5 the picture of some of the dams in the river?

6 MR. MORA: No, I have not. I'm familiar with that
7 area. I know about those dams. I'm familiar with the
8 people who constructed those dams back when they were
9 done. I know the families and I have not, you know,
10 observed their documentation; but I do know about those.

11 MR. CAGLIERO: I don't know anything about them
12 either.

13 MS. MROWKA: Okay. I was just curious if either of
14 you gentlemen knew information with respect to how tall
15 those dams are?

16 MR. MORA: I don't know the exact depth. They have
17 been a discussion and controversy probably for the last
18 twenty years in our area, and at times it's been reported
19 on by our local newspapers. They were put there for the
20 protection of fish it's my understanding, and that's only
21 my opinion.

22 MS. MROWKA: Moving along now to Mr. Chaulet.

23 Mr. Chaulet, you have given us a number of
24 calculations here. What I wanted to know, first off, is
25 with respect to these, did you reach a different

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1 conclusion than the City did? And let me just state what
2 my understanding of the City's understanding of the
3 conclusion is first before you answer.

4 It is my understanding that the City stated that
5 the Reservoir Enlargement Project will not change the
6 ability to meet the live stream condition during any of
7 the water year types, that it will affect the spills from
8 the reservoir as the primary effect.

9 Did you reach any different conclusion as a result
10 of your calculations?

11 MR. CHAULET: Well, are we obliged to talk about
12 live stream after all? Is that --

13 MS. MROWKA: I'm just simply asking did you reach
14 any different result as to the Reservoir Enlargement
15 Project impacts on ability to either meet the live stream
16 condition of the permit or -- the City testified that the
17 primary impact was just on the spill regime.

18 Did you reach any different conclusion as a result
19 of your work?

20 MR. CHAULET: Well, with regards to the spill
21 regime as you pointed out, obviously I'm effectively
22 stating that the differences are substantially larger
23 than what the other party has claimed and they're on the
24 order of -- depending upon what kind of routing you take
25 with respect to the City and so forth, could be anywhere

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1 between twenty-five and fifty percent.

2 With regards to the live stream, I have looked at
3 that and plotted the data and resolved that the releases
4 prior to the infamous 1972 date were somewhat larger on
5 the average anyway than they have been since so far,
6 although I have to say that in the recent years there's
7 been somewhat of an increase. I'm not sure whether
8 that's to continue or not.

9 One of the other things is that immediately
10 prior -- in the decade prior to the 1972 year,
11 notwithstanding the fact that the reservoir was somewhere
12 between eighty-four to one hundred percent full, those
13 were the years when the live stream was almost none, very
14 little, and I don't know how to reconcile that.

15 The other thing that I've resolved is that when you
16 plot the so-called average monthly flow of the live
17 stream, it would appear that in the early years before
18 1972 that the peak release was in the month of July and
19 somewhat of a secondary peak in September, which I'm not
20 a fish biologist, but I would like to think that that may
21 have a more beneficial -- how do you say, indication to
22 the habitat than an almost reverse release sequence in
23 the more recent years, 1972 to 1997, when the so-called
24 peak release seems to coincide sometime in January or
25 February. And that peak is about half the spill volume

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1 than the earlier years.

2 And what I'm a little bit puzzled by, calling this
3 live stream release seems a little bit at odds -- I
4 almost get the implication that the water is flowing over
5 the spillway anyway and somebody opens up the pipes and
6 calls that the spill release -- live stream, rather, and
7 you might just as well let it all run over the outflow
8 because I think it's going to go there anyway. So I'm a
9 little puzzled how to reconcile those numbers.

10 As far as the averages were concerned, in the
11 earlier years the average was on the order of 170
12 acre-feet per month and since the '72 date apparently
13 it's around 140 acre-feet per month. These are average
14 numbers. So there's about a twenty percent disparity.

15 MS. MROWKA: In your opinion, when will the City's
16 project most likely impact the flows?

17 MR. CHAULET: When?

18 MS. MROWKA: Yes. Do you show any different time
19 window as a result of your modeling than the City shows
20 in theirs for impacts?

21 MR. CHAULET: Well, are you talking on an annual
22 basis, Miss?

23 MS. MROWKA: The City testified that their primary
24 impact would occur when there's a wet year that follows a
25 sequence of dry years and that you're more likely to see

1 less spillage when this occurs with the project than with
2 the current situation.

3 Did you have any conclusions regarding this matter?

4 MR. CHAULET: Well, I think that's generically
5 correct. In other words, the tendency is to supplement
6 or resupply your reservoir storage. And so if you have a
7 period that might be characterized as a drought or very
8 low runoff, the inclination is to put that storage to use
9 behind the dam as such whether or not you have a high
10 flow year. During that year the benefits would be, you
11 know, substantially reduced for the downstream
12 environment because it may effectively capture it all for
13 that matter.

14 MS. MROWKA: The City provided their testimony with
15 respect to potential impacts of their project upon the
16 Atascadero groundwater basin.

17 Did you do any similar analysis?

18 MR. CHAULET: Well, I examined the data that was in
19 the EIR and, you know, the characterization of the basin
20 there is that it's a sub basin to the Paso Robles basins
21 and, indeed, the Atascadero sub basin tends to recharge
22 part of the Paso Robles at the northerly end.

23 The basin itself is rather narrow -- long and
24 narrow and not very deep, and in my judgment is very
25 vulnerable to the kind of fluctuations that these

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1 gentlemen here have been talking about because of the
2 amount of potential for taking out and even going so far
3 as to -- how you say, take more than what comes in and
4 maybe even deplete it at some stages depending how deep
5 you want to go.

6 MS. MROWKA: Did you calculate any number with
7 respect to potential changes in recharge to that basin?

8 MR. CHAULET: No, I've not done any of those
9 calculations. I do recall that -- I believe it was the
10 Morro group that indicated there was a period coincident
11 with the latest drought period, if you will, that there
12 was an overdraft on the order of four hundred -- 4,000
13 acre-feet. That's the only thing that I know at this
14 date.

15 MS. MROWKA: And please explain for me how you
16 checked the veracity of the results that are recorded
17 here.

18 MR. CHAULET: Well, I'm not sure what you mean. In
19 other words, the data that was provided in the EIR was
20 assumed to be correct and that's what I've used. The
21 data is in my reports. They're basic calculations of
22 mathematical flow. I'm not aware that there are any
23 errors in it, per se; but if there are, then maybe
24 someone can point them out to me.

25 MS. MROWKA: If you'll please turn to your Table 4.

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1 MR. CHAULET: Okay.

2 MS. MROWKA: And I'm looking at Column 6 entitled
3 "City Allocation."

4 MR. CHAULET: Okay.

5 MS. MROWKA: And I'm looking on the underline is
6 eighteen and nineteen coming across to that Column 6.

7 MR. CHAULET: Very well.

8 MS. MROWKA: And you indicated that there would
9 only be an allocation of 229 acre-foot in one year for
10 the City and zero acre-foot in the next year for the
11 City.

12 How do you reconcile that with the City's model
13 that indicates that there would at all times be some
14 water for their use?

15 MR. CHAULET: Well, I don't know, for instance,
16 whether that model uses the same allocation of 10,000
17 acre-feet; but I presumably utilized the data that was in
18 the FEIR and, again, it's a matter of routing the water
19 and allocating to live stream and evaporation and spill
20 flows. And so when you add -- when you subtract the
21 numbers accordingly, that's what the data shows.

22 MS. MROWKA: Do you believe that that represents
23 what would actually occur?

24 MR. CHAULET: Well, if you're asking me would it
25 actually occur or are you --

1 MS. MROWKA: Do you believe that this represents a
2 scenario that could, in fact, happen?

3 MR. CHAULET: The reality of whether or not it
4 could happen I think is there. Obviously, this is a
5 scenario where it did not actually happen.

6 I'm trying to show in here that if you had an
7 existing reservoir at the capacity of 23,000 plus
8 acre-feet and you had the volumes that you have which
9 historically have been documented that that's, indeed,
10 what would happen if the City took up to 10,000 acre-feet
11 a year, which it hasn't done yet.

12 MS. MROWKA: What level of statistical accuracy
13 would you assign to your work?

14 MR. CHAULET: Well, if the basis of the data, which
15 has been testified to by the other party is very high,
16 then I would like to say they are similarly rated.

17 MS. MROWKA: If you had taken this data and
18 utilized for a check the City's modeling assumptions,
19 would you have arrived at the same results as the City's
20 efforts?

21 MR. CHAULET: I think in the calculations that I
22 made here I'm making a spill reduction calculation that
23 relates to the historical spill, and I'm not sure that
24 they did exactly the same thing.

25 I believe they may have related to the future spill

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1 as far as a ratio nad their percentages are different
2 than mine, but I'd like to think the spill reduction
3 should be based on the relationship of the spill impact
4 to the historical spill and that, more likely than not,
5 is the difference between our analysis.

6 MS. MROWKA: Turning to Table 2, could you just
7 simply go across the top column headings and tell me
8 which of these columns you obtained your data from City
9 sources.

10 MR. CHAULET: Well, I think the data spells -- how
11 do you say, speaks for itself. If I recall, the source
12 of the initial storage came from either City sources or
13 the FEIR. I don't recall particularly.

14 I believe Columns 2, 3 and 4 presumably came from
15 the City data. And the Column No. 5 would be something
16 that you would calculate by virtue of the additions and
17 deductions of allowances. And then the City allocation,
18 likewise, Column 6, came from the City after reviewing
19 the recordation of the use of their water over the years.
20 And that accounts for No. 7 by virtue of calculation.
21 The historical spill, likewise, I think either came from
22 the EIR or from the City. And, accordingly, the other
23 numbers as well by virtue of -- I think they came from
24 the EIR, as I remember.

25 MS. MROWKA: Can you just explain to me what the

1 column entitled "Future Spill" means?

2 MR. CHAULET: If I understand it correctly, there
3 the indication of what -- it's what the spill volume
4 would be given the characterization of the flow into the
5 reservoir as opposed to the historical spill, which I
6 gather is a recorded data or by calculation, whatever the
7 City recorded over the years.

8 MS. MROWKA: Thank you.

9 H.O. BROWN: How many more do you have, Kathy?

10 MS. MROWKA: Not much.

11 In your results, then, if you could just -- this
12 final question. If you could just restate for me, then,
13 your final conclusions regarding the time of year and
14 what year types you believe that the Reservoir Expansion
15 Project will have impacts on the downstream flows.

16 MR. CHAULET: I think by way -- if the dam is
17 increased to the height that it is, it obviously will
18 have an impact in so far that the number of spill flows,
19 as well as their respective volumes, will decrease. And
20 the most negative implications of that, in my judgment,
21 are the ones following a period of, let's say, drought or
22 very low inflow because -- notwithstanding the fact that
23 you might have a significant rainfall period, the flows
24 that are generated are probably by and large captured so
25 that the downstream environment will not benefit from the

1 scouring action that could happen.

2 Obviously, if you have a very substantial flow that
3 will not only fill the reservoir but also flow over the
4 spillway, then, again, statistically it's possible to
5 have scouring after all.

6 H.O. BROWN: Jim, do you have any questions?

7 MR. SUTTON: Very brief. Mr. Schmidt.

8 MR. SCHMIDT: Yes, sir.

9 MR. SUTTON: You testified that you're located
10 about three miles below the reservoir; is that correct?

11 MR. SCHMIDT: That's correct.

12 MR. SUTTON: Are you above or below Pilitas Creek?

13 MR. SCHMIDT: Below it.

14 MR. SUTTON: You're below it.

15 During the period of time that you've lived there,
16 has there ever been a period when there has been no flow
17 past your property?

18 MR. SCHMIDT: No, it's very -- it's dramatically
19 dropped and during the period of that extended drought it
20 went -- in spots in the property below mine it went below
21 ground and there was no flow. I have flow, but it is
22 very restricted. It's dropped to about three foot in
23 level from below average or normal flow through the
24 property -- I mean, on the river through the property and
25 it's -- obviously the water temperature increases and the

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1 silt and what have you and/or all of the debris in the
2 river is obviously stagnant or --

3 MR. SUTTON: You say the water dropped to a level
4 of about three feet. Did I understand what you just
5 said?

6 MR. SCHMIDT: Correct, below normal levels but --
7 an average level, what I consider to be average.

8 MR. SUTTON: What's an average level past your
9 property?

10 MR. SCHMIDT: Depth wise?

11 MR. SUTTON: When you say three feet, are you
12 talking about depth?

13 MR. SCHMIDT: I'm sorry, yes, that's what I -- the
14 water goes between about four feet and twenty feet deep
15 through my property through a majority of --

16 MR. SUTTON: All right. When the water flows onto
17 your property, you say it's never ceased flowing --

18 MR. SCHMIDT: To have a continuous flow.

19 MR. SUTTON: Continuous flow. Do you know if
20 Pilitas Creek was contributing to that or does that creek
21 dry out?

22 MR. SCHMIDT: I believe that it dries up.

23 MR. SUTTON: So are there any other significant
24 tributary streams to the Salinas River between your
25 property and the dam?

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1 MR. SCHMIDT: No.

2 MR. SUTTON: So are we to conclude -- pardon me?

3 Go ahead.

4 MR. SCHMIDT: These are kind of -- my property has
5 these -- through a canyon through these different pools
6 and so it maintains the water and it goes so slow you can
7 barely -- except for in a restricted area -- different
8 fluctuating cross-sections of the river you can't
9 really -- on these low flow times you cannot -- you don't
10 notice the movement of the water.

11 MR. SUTTON: The conclusion I'm attempting to get
12 from you is this: There has always been -- at least as
13 far as your property and in your experience, there has
14 been water coming from the dam or the area of the dam
15 onto your property? There's never been a time when you
16 have not observed that occurring; is that correct?

17 MR. SCHMIDT: That's correct.

18 MR. SUTTON: Okay. You said the water varies from
19 four feet to twenty feet.

20 MR. SCHMIDT: Correct, but in this four-foot level
21 sometimes, as you know, rivers change and there can be an
22 amount of aggregate, sand or -- well, in this area
23 decomposed granite that builds up and so the actual depth
24 is -- in certain ponds can be only a foot to six inches
25 deep but the sand level, as I've experienced in years

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1 before, in those pockets would have been three to four
2 feet.

3 MR. SUTTON: Are all of these ponds natural ponds?

4 MR. SCHMIDT: Most definitely. The beaver -- I
5 have some beaver in there and every once in a while the
6 beaver -- or periodically these five to six families of
7 beaver construct dams that hold some of the water back
8 but then with these floods over the years the beaver have
9 been -- the beaver dams have been washed out and the
10 beaver population has been knocked down because
11 they're -- they have their most -- they don't have a
12 center hut they put in the river since it's fluctuating
13 height. So they go in the banks and expose their entry
14 in the banks and they were predated on and eliminated
15 by -- I don't know, a bobcat or what have you.

16 MR. SUTTON: Okay, thank you. That's all I have.

17 H.O. BROWN: Counselor.

18 MS. MAHANEY: Mr. Cagliero, you testified earlier
19 that you were testifying on your own behalf and that of
20 the North County organization; is that correct?

21 MR. CAGLIERO: No, I'm just representing myself and
22 fellow ranchers in our area. You know, I'm on the North
23 County Water Forum appointed by Harry Ovitt, our
24 supervisor, to represent North County agriculture. So I
25 try to speak for myself and everybody involved in north

1 county agriculture.

2 MS. MAHANEY: But you are here on Cal SPA's behalf;
3 is that correct?

4 MR. CAGLIERO: What's that?

5 MS. MAHANEY: Are you here on Cal SPA's behalf; is
6 that correct?

7 MR. CAGLIERO: Well, you know, I don't know if I am
8 or I'm not. I'm using -- I'm thankful Cal SPA made this
9 protest so I have a chance to say something here. I
10 think that the benefit for their behalf and fish in the
11 river also benefit me. So I suppose they're related, but
12 I'm speaking more for my own water rights than I am for
13 Cal SPA's in particular.

14 I mean, I'm not against the City of Paso Robles or
15 Templeton or Atascadero or San Luis Obispo. In fact, I'm
16 just against this dam expansion. I think it will be a
17 detriment to our farming operations. I think it will be
18 a detriment to the farming operations in the North
19 County.

20 And, you know, my son farms after me. He takes
21 about -- he does all the alfalfa operation now. We do
22 the grapes together. My grandson's coming along behind
23 him. We're looking long term. We've made a deal with
24 Fetzer Winery to build a winery. It's a sixty-year deal.
25 I'll be 122 when that's over with. I don't think I'll be

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1 around. You know, my son will be 92 and my grandson will
2 be 62 at my age and he'll think I'm crazy for making the
3 deal; but that's the way it is.

4 MS. MAHANEY: All right, thank you.

5 Mr. Schmidt.

6 MR. SCHMIDT: Yes.

7 MS. MAHANEY: You stated that you have observed and
8 caught steelhead when it was legal to do so in the
9 Salinas River?

10 MR. SCHMIDT: That is correct.

11 MS. MAHANEY: What is the basis for identifying
12 those fish as steelhead? Is that -- go ahead.

13 MR. SCHMIDT: I was keying them out in some audubon
14 and another book I had.

15 MS. MAHANEY: Okay. Did you ever take a specimen
16 to Cal Poly for identification?

17 MR. SCHMIDT: No, I didn't, not of these.

18 MS. MAHANEY: Okay, thank you.

19 MR. SCHMIDT: But I do have the photograph and it's
20 a fairly large photograph. You could possibly make a
21 positive identification.

22 MS. MAHANEY: Okay, thank you.

23 H.O. BROWN: Okay. Ms. Scarpace, we're going to
24 adjourn and reconvene October 18th. You will be up with
25 redirect with this panel.

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1 I see Mr. Pettit in the back of the room. Do you
2 have a subpoena in to Mr. Pettit and some other people?
3 When do you expect him to show?

4 MS. SCARPACE: I requested them to return on
5 Monday.

6 MS. MAHANEY: Just to clarify, if I may.

7 H.O. BROWN: Yes.

8 MS. MAHANEY: You had stated earlier that you did
9 not intend to call Mr. Pettit any longer; is that
10 correct?

11 MS. SCARPACE: He doesn't have to appear.

12 H.O. BROWN: I see a smile on Mr. Pettit's face in
13 the back of the room, I believe.

14 MS. SCARPACE: I have something -- well, a motion
15 to make, though, regarding the evidence.

16 H.O. BROWN: All right.

17 MS. SCARPACE: I would request on the basis of the
18 Best Evidence Rule that the City of San Luis Obispo
19 provide the parties with the spreadsheet model and the
20 disk that the model is on concerning their calculations
21 that they did for the EIR so that all parties can examine
22 that, since it wasn't provided in the EIR.

23 H.O. BROWN: All right. I see them discussing the
24 issue. Can you do that?

25 MR. SLATER: First of all, the stuff has already

1 been admitted, but I don't think that it's a problem.
2 We'd be glad to provide it. So in due course. Who and
3 where?

4 MR. BAIOCCHI: Probably more than one person.

5 MS. SCARPACE: Yes, to all the parties to give them
6 a copy of the disk and if you have a written spreadsheet,
7 that also.

8 MR. SLATER: Can we do that?

9 MR. HUTCHINSON: How many disks do you want?

10 H.O. BROWN: Just send it to all the parties.

11 MR. SLATER: Send a disk to all the interested
12 parties?

13 MS. SCARPACE: Right, and we would like it before
14 we reconvene on this matter.

15 MR. SLATER: I'm sorry, all designated parties,
16 right?

17 H.O. BROWN: Okay, all designated parties.

18 All right. Anything else before we adjourn for the
19 evening?

20 MS. CAHILL: I brought my written opening statement
21 today thinking I might have to give it. Obviously I'll
22 summarize it orally at the beginning of my case in chief,
23 but since it's here I'd like to just go ahead and pass it
24 out now.

25 H.O. BROWN: Okay. Ms. Cahill, you may do that.

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1 MS. CAHILL: Thank you.

2 H.O. BROWN: And then we'll accommodate your
3 concerns come Monday morning.

4 MS. CAHILL: Thank you.

5 H.O. BROWN: Mr. Cagliero.

6 MR. CAGLIERO: Mr. Brown, I wasn't planning on
7 returning Monday. Is this a necessity for me?

8 H.O. BROWN: Are you going to have any redirect for
9 him?

10 MS. SCARPACE: No.

11 H.O. BROWN: If there's no redirect, there is no
12 recross.

13 MS. SCARPACE: Right. There is one question I'd
14 like to ask Otto Schmidt, if that's possible.

15 MR. SCHMIDT: On Monday?

16 MS. SCARPACE: Just now.

17 H.O. BROWN: On Monday?

18 MS. SCARPACE: Just now. It was a concern that was
19 raised by the staff and he had information --

20 H.O. BROWN: If you redirect, I'm going to have to
21 allow recross.

22 MS. SCARPACE: It would only take a minute.
23 Mr. Schmidt, are you --

24 H.O. BROWN: Wait a minute. Wait a minute. We
25 made a notice on this meeting today at 4:00 PM. I'm

1 willing to stay for another question, but we have to give
2 the opportunity then for the recross of this witness.

3 Does this cause a problem with anyone here?

4 MR. SLATER: No, not with the City.

5 MS. CAHILL: No.

6 H.O. BROWN: All right. As I understand it, you're
7 going to redirect just one witness?

8 MS. SCARPACE: Just one witness and one question
9 and that's all.

10 H.O. BROWN: Okay. And then you're not going to
11 have redirect for any of the other witnesses?

12 MS. SCARPACE: No.

13 H.O. BROWN: Then they can be excused after today
14 then?

15 MS. SCARPACE: Yes.

16 H.O. BROWN: All right, go ahead with the redirect.

17 ----oOo----

18 REDIRECT EXAMINATION OF

19 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

20 BY MS. SCARPACE

21 MS. SCARPACE: Mr. Schmidt, are you familiar and
22 have you personally observed those constructed dams along
23 the Salinas River that were mentioned here today, the --

24 MR. SCHMIDT: The impoundments?

25 MS. SCARPACE: The impoundments, the private ones.

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1 MR. SCHMIDT: I've observed two of the ones. Not
2 down toward these gentlemen at Atascadero/Paso Robles but
3 there's one -- the property adjacent to mine or
4 contiguous with mine upstream and then downstream a mile
5 and a half is another much larger impoundment.

6 MS. SCARPACE: Do you know what the height of those
7 impoundments are?

8 MR. SCHMIDT: Fifteen feet. One's fifteen. The
9 one --

10 H.O. BROWN: You mean the water depth? She said
11 the height.

12 MS. SCARPACE: From the top of the water to the top
13 of the impoundment.

14 MR. SCHMIDT: Well, I usually go from the back
15 because the dams get filled in quite rapidly with -- as
16 all reservoirs do.

17 Which space are we talking about, downstream --

18 MS. SCARPACE: It would be downstream, the height
19 from the water to the top.

20 MR. SCHMIDT: Right. I would think the --

21 MS. SCARPACE: To the spillway.

22 MR. SCHMIDT: The one upstream from mine is
23 approximately, I guess, fifteen feet or maybe a little
24 more.

25 MS. SCARPACE: Just at the spillway?

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1 MR. SCHMIDT: At the spillway down to the base of
2 the river below, and then the one downstream is ten to
3 fourteen feet.

4 MS. SCARPACE: Okay.

5 H.O. BROWN: Okay. Is there any recross for
6 Mr. Schmidt by any of the parties?

7 MS. CAHILL: No recross.

8 MR. SLATER: No recross.

9 H.O. BROWN: All right. The panel is excused. See
10 you all Monday. We are adjourned.

11 (Whereupon the proceedings were adjourned at 4:45 PM.)

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REPORTER'S CERTIFICATE

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STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

I, TERI L. VERES, certify that I was the Official Court Reporter for the proceedings named herein, and that as such reporter I reported in verbatim shorthand writing those proceedings; that I thereafter caused my shorthand writing to be reduced to typewriting, and the pages numbered 271 through 518 herein constitute a complete, true and correct record of the proceedings:

PRESIDING OFFICER: JOHN BROWN, Hearing Officer
CAUSE: Notice of Public Hearing Petition of Extension of Time Permit No. 5882 (Application 10216) of the City of San Luis Obispo and the United States Army Corps of Engineers Salinas River in San Luis Obispo County.
DATE OF PROCEEDINGS: Wednesday, October 13, 1999

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on this 25th day of October, 1999.

TERI L. VERES, CSR NO. 7522

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